

K. McAllister - People - Recross 845

1 about or say to her anything with regard to what you were
2 trying to figure out?

3 A. No.

4 Q. And you testified about not finding vaginal
5 findings or anal findings on Mya; could you explain what
6 findings would be?

7 A. Findings would be injuries.

8 MR. PERRI: Thank you, your Honor.

9 THE COURT: Anything on that, Mr. Berger?

10 RE CROSS-EXAMINATION

11 BY MR. BERGER:

12 Q. If you found any injuries to the anus, you would
13 have ordered a colposcope or something like that?

14 A. A colposcope doesn't need an order. It would be
15 documented in my findings.

16 Q. And there were no indications for a colposcope,
17 correct?

18 A. A colposcope is a camera. You can use one or not.

19 Q. Right. In this case you didn't direct one, did
20 you?

21 A. I didn't use one, no.

22 Q. Because no anal findings on your part?

23 A. Okay; correct.

24 MR. BERGER: Thank you. Nothing further.

25 THE COURT: Anything else?

Chillseyzn - People - Direct

846

1 MR. PERRI: No, your Honor.

2 THE COURT: Please be careful stepping down.
3 Call your next witness.

4 MR. PERRI: People call Chris Chillseyzn.

5 C H R I S T O P H E R C H I L L S E Y Z N, called on
6 behalf of the People, having been duly sworn, took the
7 witness stand and testified as follows:

8 THE CLERK: State your name, spell first
9 name, last name, and county of residence.

10 THE WITNESS: Christopher,
11 C-H-R-I-S-T-O-P-H-E-R, C-H-I-L-L-S-E-Y-Z-N. I live in
12 Nassau County.

13 THE COURT: You may inquire.

14 DIRECT EXAMINATION

15 BY MR. PERRI:

16 Q. Mr. Chillseyzn, you are currently employed?

17 A. Yes, sir.

18 Q. Who are you employed by?

19 A. I work for Nassau County Medical Examiner's Office
20 Division of Forensic Services in the biology section.

21 Q. Where is the Medical Examiner's office located?

22 A. East Meadow, Nassau County.

23 Q. What is your title within the Medical Examiner's
24 Office?

25 A. I'm forensic geneticist one.

Chillseyzn - People - Direct

847

1 Q. And how long have you been employed by the Nassau
2 County Medical Examiner's office?

3 A. A little over eight years. I started in March of
4 2007.

5 Q. And what are your responsibilities as a forensic
6 geneticist?

7 A. Basically, members of my laboratory, we receive
8 evidence pertaining to criminal cases. We examine for the
9 presence of biological materials, try to determine what that
10 material may be, whether it is blood, semen, saliva what
11 have you. We try to develop DNA profile from that, issue a
12 report as to our findings and testify when required.

13 Q. Were you employed prior to working for the Nassau
14 County Medical Center Examiner's office in forensic
15 geneticist?

16 A. Yes.

17 Q. Where were you employed by?

18 A. I started in September of 2000 with New York City
19 Office of the Chief Medical Examiner in their Department of
20 Forensic Science, in the Forensic Biology Department.
21 That's their DNA lab in the city. I did that for two years,
22 until September of 2002. I went to the New Jersey State
23 Police and worked in the DNA laboratory there.

24 Q. And were your duties at those two places of
25 employment comparable for what you do for the Nassau County

Chillseyzn - People - Direct

848

1 Medical Examiner's office?

2 A. Yes.

3 Q. What is your educational background?

4 A. Bachelor degree in biology.

5 Q. Now, as part of your work at the Nassau County
6 Medical Examiner's office, do you take competency exams?

7 A. Yes.

8 Q. What does it mean to take a competency exam being
9 at the medical center?

10 A. Competency exams refer to your initial competence.
11 Basically, when you start the job at a forensic laboratory,
12 you are demonstrated all of the techniques and procedures
13 that you will be doing. You are then required to perform
14 all of those techniques and procedures while being observed
15 by a competent analyst. After which point you are given
16 unknown samples you have to perform all of the procedures
17 on. That's the competency test to deem you are competent in
18 those procedures.

19 Q. And did you take that competency examination?

20 A. I did.

21 Q. Have you passed those competency examinations?

22 A. I did.

23 Q. Do you also take proficiency exams?

24 A. Yes.

25 Q. And what is a proficiency exam?

Chillseyzn - People - Direct

849

1 A. Proficiency exams are through the proficient still
2 in the procedures. They're given every six months, twice a
3 year, and basically, it's just unknown samples from outside
4 agencies that are given to us. We have to examine them as
5 casework and, you know, produce results that are then
6 reviewed by that outside agency and they determine if you
7 correctly performed all of the analysis and then are
8 proficient.

9 Q. Are you currently deemed proficient?

10 A. I am.

11 Q. Have you ever been deemed un-proficient?

12 A. No.

13 Q. Do you engage in continuing education in your
14 field?

15 A. Yes, we're required to.

16 Q. Can you summarize what the requirements are?

17 A. Eight hours a year minimum requirement, usually
18 involves things like extra statistical training, or classes
19 given somewhere throughout the state generally.

20 Q. Have you completed your requirement in continuing
21 education for this year?

22 A. I have this year, yes.

23 Q. During your career as a forensic geneticist,
24 approximately how many evidentiary exams have you conducted?

25 A. Thousands.

Chillseyzn - People - Direct

850

1 Q. As part of your work in the medical examiner's
2 office, have you worked to develop DNA profiles?

3 A. Yes.

4 Q. Approximately, how many times have you done that
5 over your career?

6 A. Profiles, again, thousands.

7 Q. Have you ever testified before regarding those
8 results of DNA analysis?

9 A. I have.

10 Q. In those instances, when you testified, were you
11 qualified as an expert in forensic geneticist and/or DNA
12 analysis?

13 A. I was.

14 Q. Which jurisdiction have you testified?

15 A. New Jersey State Supreme Court, here in Nassau
16 County, grand jury and trial and civil trial in Nassau
17 County, and grand jury in Suffolk County.

18 Q. Has there ever been a time when a Court has not
19 deemed you to be an expert?

20 A. No.

21 Q. Is the medical examiner's office, for who you
22 work, is the medical examiner's office an accredited
23 laboratory?

24 A. The DNA lab is an accredited lab.

25 Q. Can you explain to the jury what an accredited lab

Chillseyzn - People - Direct

851

1 is?

2 A. We're accredited by a body called ASCLD lab, it's
3 the American Society of Crime Lab Director Laboratory
4 accreditation board, and they're a national agency that
5 basically, when they come into your lab, they run an audit
6 of it, check your policies and procedures, how they are
7 written, go over the personnel, the employment, records.
8 They go over your recordkeeping practices and look at the
9 work you are doing. Basically, they're there to make sure
10 that your policy procedures follow nationally mandated
11 guidelines that you are doing, what you say you are doing,
12 and that you are recordkeeping practices demonstrate that
13 you are doing what you are doing and can prove it and that
14 your personnel are all up to the guidelines they issue.

15 Q. Are there processes in place at the medical
16 examiner's office to ensure evidence does not get
17 contaminated?

18 A. Oh, yes. We have a lot of quality assurance and
19 quality control procedures, they're called. They start out
20 with things, personal protective gear, gloves and masks to
21 make sure we're not contaminating evidence with our own DNA,
22 but cross contamination is really more of a concern. We do
23 things like cleaning the equipment and benchtop between each
24 examination, using disposable equipment whenever possible.
25 And never running known and unknown samples together at any

Chillseyzn - People - Direct

852

1 time you examine them together. Procedures like that to
2 ensure the integrity of the evidence is always paramount.

3 MR. PERRI: Your Honor, I ask at this time
4 the witness be deemed an expert in forensic genetics
5 and DNA analysis.

6 THE COURT: Mr. Berger, would you like to
7 inquire?

8 MR. BERGER: No.

9 THE COURT: Give me the title again.

10 MR. PERRI: Forensic geneticist and DNA
11 analysis.

12 THE COURT: This witness is being declared an
13 expert in forensic genetics and DNA analysis without
14 objection; is that correct, Mr. Berger?

15 MR. BERGER: Yes, your Honor.

16 THE COURT: Thank you.

17 Q. Explain to the jury what DNA is.

18 A. Sure. DNA stands for deoxyribonucleic acid. It's
19 really just a long double chain molecule that we find in
20 almost every cell of our body. It works like a genetic
21 blueprint. It determines things such as hair color, eye
22 color. Some important things to remember about DNA are you
23 get half from your mother and half from your father. They
24 remain the same throughout your lifetime so if we compare
25 DNA from now to ten years ago, from the same individual, it

Chillseyzn - People - Direct

853

1 will be the same, and it's the same throughout your body.

2 So DNA from your saliva, or from your blood, or skin cells,
3 from the same individual, will be the same.

4 Q. And what factors can lead to DNA being found on
5 clothing?

6 A. I mean, it has to be deposited. Like I said, the
7 DNA is found in cells of the body, so any cells that get
8 deposited on clothing, just by wearing clothes you deposit
9 skin cells by also other biological fluids, sweating, saliva
10 blood, any of those carry DNA.

11 Q. Can you explain how saliva is contained in DNA?

12 A. Sure. It basically just has cells from in the
13 salivary glands and ducts themselves, when it is produced
14 epithelial cells, or skin cells are put in there, but also
15 cells from inside your mouth are swabbed off continuously
16 and will always be in your saliva.

17 Q. Can you explain what else is in your saliva?

18 A. It's mostly water. It's secretion produced by the
19 saliva gland. The important part of it, as far as bodies
20 are concerned, an enzyme called Amylase that starts to break
21 down carbohydrates while the food is still in your mouth.

22 Q. What is the purpose of doing DNA analysis?

23 A. Well, DNA, it's a tool we use to identify an
24 individual that may have left behind biological fluid. It's
25 very discriminating. Like I said, DNA is very long

Chillseyzn - People - Direct

854

1 molecule. It's about three billion base pairs long.
2 Between all of us, 99 percent of our DNA is exactly the
3 same. That's what the determines makes a human body. It
4 has to be the same. That less than one percent that is
5 different from each person. We're able to look at small
6 sections of the DNA in those differences and we're able to
7 determine what alleles or variations a person may have at
8 those sections. By looking at several different sections of
9 DNA, we're able to develop a profile, and those profiles are
10 very characteristic of the individual that the DNA came
11 from. With the exception, of identical twins, everyone's
12 DNA profile is going to be different, and that's a very
13 powerful tool for us to individualize, or to say who
14 contributed DNA that might be found on evidence.

15 Q. Can you clarify what you mean by the word allele?

16 A. I'm sorry, allele is just the word we use to name
17 the different variants that are available at any location.
18 So, for example, if you are looking at simplistically the
19 part of DNA that gives people eye color, the gene that gives
20 blue eyes, is one allele, the brown-eyed gene would be
21 another allele. It's another word for the variable.

22 Q. Outside of identical twins, can DNA be the same
23 for any two people?

24 A. No.

25 Q. What does it mean to be a contributor of DNA?

Chillseyzn - People - Direct

855

1 A. That just refers to the person who contributed the
2 DNA to the evidence. Sometimes DNA may be a single source,
3 from one person contributing DNA to the stain, or it could
4 be a mixture where more than one person contributed DNA to
5 certain pieces of evidence we're examining, and they're both
6 considered contributors to that mixture.

7 Q. What processes do you use to analyze DNA?

8 A. Our analysis involves a four-step process. After
9 we identify the biological fluid and try to determine what
10 it may be, it goes into the first step, which is the
11 extraction. We take a small cutting of whatever we're
12 looking at, the swab or a stain, and we put it into a tube,
13 add some chemicals and heat and it breaks open the cells,
14 and releases the DNA into the solution.

15 Now that we got the DNA in the solution, we need
16 to know how much is there, and if it is actually amplifiable
17 human DNA.

18 So the second step is quantitation. That just
19 tells us how much DNA we have in the solution there.

20 The third step is amplification. Without it we
21 know how much DNA we have in the solution. We need to make
22 it usable to us. So, we amplify those small sections in the
23 DNA that we're concerned with through a process called PCR,
24 preliminary chain reaction. It's like the legend to the
25 Xerox machine. We take that double chain, DNA, add heat and

Chillseyzn - People - Direct

856

1 it splits apart and chemicals comes through and just makes
2 copies of two strands.

3 Now, you have one strand of DNA. You could have
4 two reliable copies for that same DNA. We do this for
5 twenty-eight cycles. So we have maybe hundreds of copies of
6 DNA that were available in the original stain. We now have
7 millions of copies of those small sections that we're
8 concerned with.

9 At the same time the multiplication is happening,
10 we're tagging the new strands of DNA with dye, reflective
11 dye. That's for the last step that is the analysis.

12 Basically, we take all of those copied sections of
13 DNA, put it in a tube at one end and under an electrical
14 current they are dragged through what is called a capillary.
15 It's a tube about thirty-six centimeters long, only about
16 the width of a human hair, but hollow inside.

17 As DNA gets dragged through the tube by
18 electricity, it gets slowed down by the inside of the tube
19 and poly that is inside. And basically, it separates out
20 that DNA by size. The shorter strand of DNA are able to
21 travel more quickly through the tube than the longer strands
22 are.

23 So the type of DNA that we're actually looking at
24 is the small section that is called STR. That is short for
25 tandem repeat. It's basically just a repeat of -- when I

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Chillseyzn - People - Direct

857

1 say DNA long chain, it's a chain of base pairs. Those are
2 molecules all linked together, three billion for the whole
3 thing. We're looking at anywhere between two-fifty base
4 pair section, and each of those sections has the short
5 tandem repeats, which are four base pairs, linked together
6 in a repetitive fashion. So at one location we're
7 looking -- for example, from your mother you might have
8 gotten twelve repeats of the same base pairs, and from your
9 father you might have gotten fifteen repeat. So at that
10 location, we just say that person is a twelve fifteen, but
11 this is number of repeats makes those sections of DNA vary
12 by size. That's what allows us when we do the analysis,
13 because they're different sizes that travels through the
14 tube at different speeds, and we can bounce a laser off that
15 dye we put on during the amplification that tells us exactly
16 how long it took a strand to go through the tube, which
17 tells us exactly how long it is, which tells us how many
18 repeats are present, and that allows us to know that at this
19 location there is this many repeats. We look at fifteen
20 different locations over the whole genome, plus one sex
21 determining location, which tells us X or Y, male or female.
22 If you put all of those numbers together, that's what we
23 consider a profile and that comparing those numbers to
24 someone's known profile allows you to say either they're the
25 same or not the same.

kmm

Chillseyzn - People - Direct

858

1 Q. As a DNA analyst, are you required to keep any
2 records when you conduct an examination?

3 A. Yes.

4 Q. What kind of records do you have to keep?

5 A. We keep all the notes that are taken during the
6 examination of the evidence, any photographs that are taken
7 during the examination of the evidence, any results of all
8 of the steps of the analysis, plus our conclusions and
9 report.

10 Along, with that there is administrative paperwork
11 such as case contacts, chain of custody, those type things.

12 MR. PERRI: I ask the witness be shown what
13 was pre-marked People's 5 and 6 for identification.

14 THE COURT: Please show it to the witness.

15 (Whereupon, People's Exhibits 5 and 6 were
16 handed to the witness.)

17 Q. Do you recognize what was marked as People's 5 and
18 6?

19 A. Yes, I do.

20 Q. What do you recognize them to be?

21 A. People's 5 is a copy of the case file and report
22 issued for our laboratory number FG130411, which is the case
23 pertaining to case report number 2013CR238372. People's
24 Exhibit 6 is a copy of the case report and file associated
25 with our laboratory number FG13S081, which is the same case

Chillseyzn - People - Direct

859

1 report number as the evidence case.

2 Q. And how are you familiar with these files?

3 A. These are, like I said, copies of case files that
4 I compiled and issued the report for regarding that case
5 number.

6 Q. Now, are the records contained in both of those
7 files made in the ordinary course of business of your
8 laboratory?

9 A. They are.

10 Q. Is it the ordinary course of business of your lab
11 to make such records?

12 A. Yes.

13 Q. Were those records made by a person under a
14 business duty to keep them and make them accurately?

15 A. Yes.

16 Q. Were those records made on or about at the same
17 time the procedures and events reported therein?

18 A. Yes, they are.

19 Q. Were you custodian of those records?

20 A. Yes.

21 MR. PERRI: I ask that both of those items,
22 People's 5 and 6 be received into evidence.

23 THE COURT: Do you need to see them?

24 MR. BERGER: I do. Could we step up?

25 THE COURT: You may.

Chillseyzn - People - Direct

860

1 (Whereupon, there was a sidebar discussion at
2 the bench, as follows:)

3 MR. BERGER: Judge, this doesn't come in as a
4 business record. It was prepared for litigation.
5 Business records are kept in the ordinary course of
6 business when they're not being prepared for
7 litigation.

8 THE COURT: Mr. Perri.

9 MR. PERRI: The medical examiner's office is
10 not part of the police department. It's a separate
11 body that these -- the examination is in the ordinary
12 course of the division of the county government, and
13 the analysis contained therein is a record that the
14 proper foundation has been laid for as the business of
15 the medical examiner's office.

16 MR. BERGER: I can't hear you.

17 MR. PERRI: To conduct this kind of testing
18 to make records of that test. In the same way as the
19 SANE nurse exam, it is very relevant in the
20 prosecution, that does not -- just because it was the
21 University Medical Center, which is also part of the
22 county government, doesn't deem it to be directly part
23 of law enforcement or to be prepared specifically for
24 litigation.

25 MR. BERGER: The nursing exam is a separate

Chillseyzn - People - Direct

861

1 exception with respect to children and hospital
2 records.

3 THE COURT: I don't think it's the children
4 part of it that makes it separate.

5 MR. PERRI: That we don't have to lay a
6 foundation for our certified copy of hospital records.
7 It's the only difference between business records and
8 containing a hospital exam and any other business
9 record.

10 MR. BERGER: This business record that you
11 call it, is a document prepared for litigation. It is
12 specifically taken in order to send to the medical
13 examiner's office for the litigation in this lawsuit.

14 MR. PERRI: This is not a lawsuit.

15 MR. BERGER: Yes, it is. It's a criminal
16 action. It's a lawsuit.

17 THE COURT: As I understand the law, as I sit
18 here right now, I do believe that these records, DNA
19 records, can come into evidence, and I'm going to allow
20 them into evidence, but I don't want them shown to the
21 jury at this point.

22 I'm just going to confirm overnight. As I
23 sit here now, I do believe that the DNA records are
24 allowed to come into evidence as a business record.
25 I'm going to allow it, but again, I'll confirm it

Chillseyzn - People - Direct

862

1 overnight. Just don't share them with the jury.

2 MR. PERRI: Yes, your Honor.

3 (Whereupon, the proceedings resumed.)

4 THE COURT: Let's have five and six marked
5 into evidence.

6 (People's Exhibits 5 and 6, previously marked
7 for identification, was marked and received in
8 evidence.)

9 MR. PERRI: I ask them be returned to the
10 witness.

11 THE COURT: They may.

12 (Whereupon, People's Exhibit 5 and 6 were
13 handed to the witness.)

14 Q. Mr. Chillseyzn, did the Nassau County Medical
15 Examiner's office under the case report number that you
16 previously testified about, did you receive evidence related
17 to an individual named Daniel Ramos, and a second individual
18 named Mya Ramirez?

19 A. We did.

20 Q. And what items of evidence did you receive?

21 A. We received one sexual offense evidence collection
22 kit taken from Mya Ramirez.

23 Q. And what other evidence did you receive, or what
24 other items did you receive with respect to Daniel Ramirez?

25 A. A buccal swab, a known swab from inside of the

Chillseyzn - People - Direct

863

1 cheek that's a known example from the individual. We
2 received one taken from Daniel Ramos.

3 MR. PERRI: I ask the witness be shown
4 People's 4 in evidence.

5 (Whereupon, People's Exhibit 4 was handed to
6 the witness.)

7 Q. Do you recognize what was marked in evidence as
8 People's 4?

9 A. I do.

10 Q. What do you recognize that box to be?

11 A. This is the sexual offense evidence collection kit
12 I referred to receiving in this case.

13 Q. How do you know that is the same sexual offense
14 evidence kit you received in connection to this case?

15 A. My initials, case number, and the date I examined
16 it are written in my handwriting on the back.

17 Q. When you received this item under case report
18 number that you discussed, could you describe whether or not
19 it's in the same condition as it presently is before you?

20 A. It is not. It was sealed just with the tape and
21 the evidence sealing label. These labels I put on it to
22 seal it after. I was done with my examination, and there
23 was seal. Now it is open.

24 Q. Could you please open the kit?

25 A. Sure.

Chillseyzn - People - Direct

864

1 Q. Look inside, and I ask you if you recognize what
2 is inside this kit?

3 A. I do.

4 Q. Do you recognize what is -- what the envelopes
5 inside are?

6 A. Yes.

7 Q. What do you recognize them to be?

8 A. These are the envelopes that you typically find in
9 a sexual offense evidence collection kit. In this case
10 there are the ones that are relevant to this case were --
11 and were used are the evidence, oral swabs and smear. A
12 smear is after they take a swab, they make a glass slide out
13 of it for examination.

14 There's the buccal specimen taken from the victim,
15 Mya Ramirez. One that contained underwear taken from the
16 victim. One for dried secretions, which are just secretions
17 that may have been on the body that the nurse examiner
18 identifies in some way and tries to swab them off and that
19 looks like it.

20 Q. In addition to those envelopes?

21 A. There's perianal swabs also.

22 Q. In addition to that last envelope and the other
23 envelope you just got when you opened that box, is there
24 additional envelopes inside?

25 A. Yes, there's one for the vulva swabs.

Chillseyzn - People - Direct

865

1 Q. With respect to all of envelopes contained in that
2 box, when you received them, were they in a different
3 condition than they are now?

4 A. They were sealed with tape on this side, bottom
5 not open. I made these cuts and resealed them after the
6 examination.

7 Q. What, if any, other markings on the envelopes did
8 you recognize?

9 A. You can see the case number, the date and
10 initials, and the item number that's in my handwriting.

11 THE COURT: Mr. Perri, we have been going for
12 a little bit more than hour now. I promised the jury
13 to get that break after an hour's worth of testimony.
14 Let me keep my word to them.

15 Members of the jury, do not discuss this case
16 during this break. Don't get on your phone and look
17 anything up. Don't talk to anybody in the hallways.
18 Keep an open mind.

19 See you all in about ten minutes. Thank you.

20 (Whereupon, the jury exited the courtroom.)

21 THE COURT: We'll take a five-minute break.
22 I just want the record to reflect I had an opportunity
23 to quickly look at some material that are on my desk
24 with regards to DNA reports, which is five and six in
25 evidence. And I just want to note for the record that

Chillseyzn - People - Direct

866

1 these reports, which I have had marked into evidence,
2 can now be shared as the People see fit. The evidence
3 and reports are admissible at trial. The Court has
4 determined an adequate foundation has been laid for
5 admissibility. I found it has been made, so they can
6 now be utilized.

7 MR. PERRI: Thank you, your Honor.

8 THE COURT: See you all in ten minutes.

9 MR. BERGER: I don't think I heard you. What
10 was the basis for it coming in?

11 THE COURT: Actual basis is the Bench Book
12 for Trial Judges, which talks about DNA evidence. As
13 long as the proper foundation has been laid by the
14 People, DNA evidence is admissible at trial and can
15 come in, and it says the Court should not include a
16 determination on the truthfulness of the evidence. I'm
17 imagining you both would have told me if that was in
18 there and that would have been excluded, but the
19 reports are, but so they can now be shown to the jury
20 if the People choose to do that.

21 MR. PERRI: Yes, your Honor.

22 (Whereupon, a short recess was taken.)

23 (Whereupon, the jury entered the courtroom.)

24 THE CLERK: Both sides stipulate to the
25 present and properly seated jury.

Chillseyzn - People - Direct

867

1 MR. PERRI: Yes, your Honor.

2 THE CLERK: Both sides are ready?

3 MR. BERGER: Yes.

4 THE COURT: You may continue.

5 MR. PERRI: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MR. PERRI: (Continuing)

8 Q. I ask you to direct your attention to the envelope
9 marked underwear.

10 A. I have it.

11 Q. Do you recognize that specific envelope?

12 A. I do.

13 Q. And what condition was that envelope in when you
14 first received it?

15 A. It was sealed.

16 Q. I ask you to take a look inside and ask you if you
17 recognize what the contents are and if you could take them
18 out?

19 A. I do. These are the underwear I examined for this
20 case and itemized as item number 1-A.

21 Q. How do you know that they are the same pair of
22 underwear you examined for this case?

23 A. You could see initials, the date number, and it is
24 in my handwriting.

25 Q. When you received that pair of underwear, were

Chillseyzn - People - Direct

868

1 they in the same condition as they are now?

2 A. No. There's a couple of stains were removed by me
3 from these underwear. They were one whole garment when I
4 received them.

5 MR. PERRI: I ask you to put it back into the
6 envelope. Thank you.

7 Q. I would like to turn to the testing you conducted
8 regarding the sexual assault evidence kit. Did you perform
9 any testing with respect to the contents of that kit?

10 A. I did.

11 Q. First I would like to ask you about the buccal
12 swab that was distributed to Mya Ramirez; inside that kit,
13 did you do any testing with regard to that buccal swab?

14 A. It was removed from the kit and retained in our
15 laboratory when it was decided that evidence would be sent
16 for testing. It was sent to try to obtain a profile of Mya
17 Ramirez.

18 Q. Were you, in fact, able to develop a DNA profile
19 of Mya Ramirez?

20 A. We were.

21 Q. Where is the swab -- to clarify where was the swab
22 located?

23 A. It's retained in our laboratory. Anything we end
24 up doing testing on, we retain in the lab.

25 Q. Did you perform any other tests with respect to

Chillseyzn - People - Direct

869

1 the other swabs that you received in the evidence collection
2 kit?

3 A. I did.

4 Q. Can you explain what other testing you did?

5 A. May I refer to my notes?

6 THE COURT: You may.

7 A. The relevant swabs in this kit that we obtained
8 were oral swabs taken from the victim, vulva swabs taken
9 from the victim, perianal swabs, and dried secretion swabs.
10 All of those orifice swabs are oral and perianal and vulva
11 came with a smear as well. I examined that smear after
12 staining for presence. I did not see any sperm cells on any
13 of those. So all of those -- cutting of all those swabs
14 were sent for what is called P30 testing, a testing for
15 protein found in semen. They all tested negative for the
16 presence of semen. They were all then sent for testing for
17 the presence of the saliva. We test specifically for that
18 enzyme Amylase, that I mentioned earlier.

19 The vulva swab, it was indicated there was saliva
20 on the vulva swab. The oral swab doesn't get tested for
21 saliva. You could expect the victim's own saliva to be
22 there and perianal was negative for presence of saliva.

23 Q. Directing your attention to the vulva swab, what,
24 if any, other testing, after it tested positive, indicating
25 saliva?

Chillseyzn - People - Direct

870

1 A. We sent it for the four-step processes I said
2 earlier, and obtained DNA profile of any contributor of DNA
3 to the swab.

4 Q. Explain the result of your testing analysis.

5 A. Sure. At the quantitation phase, that second step
6 where we determine how much DNA is present in the solution,
7 we're actually doing two quantitations right there. We test
8 for the presence of what we call, autosomal DNA. That's the
9 DNA that I was describing earlier that you get from your
10 mother and from your father. You have from each. We test
11 another type of DNA which is called YSTR. It's the exact
12 same type of STR's. It's examined in the exact same way as
13 the autosomal STR's. The difference is they are only found
14 on the Y chromosome, which only men have. We do this for a
15 couple of reasons.

16 A: We're able to look in smaller amounts of DNA,
17 but in a case like this, where the swab is taken from the
18 body of a female victim, for example. If we're going to
19 find anything, but the female victim on there, specifically
20 a male, by looking at the YSTR DNA, we're eliminating, we're
21 not amplifying the female DNA. We're only amplifying the
22 YSTR that may be present for the male.

23 During the quantitation stage, the second stage,
24 we're actually quantitating how much autosomal DNA is
25 present, and how much male specific YSTR DNA is present.

kmm

Chillseyzn - People - Direct

871

1 When we have quantitated the vulva swab, it was indicated
2 that male DNA was present. It was sent over for the rest of
3 analysis.

4 Q. After finding there was male DNA present on the
5 vulva swab received for Mya Ramirez, what, if any, other
6 testing or results did you have from that swab?

7 A. We developed a profile, but it was a single source
8 profile, there were no DNA alleles formed for the victim.
9 It was the profile of the victim.

10 THE COURT: Let's have the question re-asked
11 and you answer.

12 Q. Were there any further results with respect to
13 that swab?

14 A. When we develop the profile from the profile,
15 there was a single source matching the profile of Mya
16 Ramirez. There was no DNA formed for the victim obtained
17 from the vulva swab.

18 Q. You said there was male genetic material found on
19 the vulva swab of Mya Ramirez; were you able to develop a
20 profile from that male DNA?

21 A. We tried amplifying YSTR DNA, but there were peaks
22 detected that didn't meet our laboratory's criteria for
23 being assigned as tall peaks, so no, we weren't able to
24 develop a Y profile from it.

25 Q. What, if anything, were you able to determine with

Chillseyzn - People - Direct

872

1 respect to underwear?

2 A. I examined the underwear under an alternate
3 source, a very bright light that when looked at with the
4 proper goggles, causes any kind of biological material to
5 fluoresce. You can see it identified two stains on the
6 underwear. I identified it as one A-1 and one A-2. They
7 were tested for presence of semen and tested negative for
8 presence of semen.

9 I then went to the salivary testing and presence
10 of saliva was indicated on both of those stains.

11 Q. With respect to stain one A-1, what other testing
12 did you conduct on that stain?

13 A. We tested for autosomal. We went through the
14 whole process that I described earlier. For the autosomal,
15 the mother and the father DNA that everyone has, we again
16 did not find any DNA formed to the victim. It was a clean
17 profile that matched Mya Ramirez. We then did YSTR
18 analysis, and we got a single source full YSTR profile of an
19 unknown male.

20 Q. With respect to stain one A-2, what were you able
21 to determine?

22 A. Again, we sent it through the process. When
23 looking at the autosomal DNA, it was a mixture. That means
24 that, again, more than one person can contribute DNA to this
25 particular stain.

Chillseyzn - People - Direct

873

1 Now, in mixtures you are able to, a lot of times,
2 if one person contributes a lot of DNA and another person
3 contributes a portion of DNA, as that DNA goes through the
4 analysis, that ratio stays the same. So when we get the
5 results at the end, just because it's a mixture, and you
6 could tell it's a mixture, it's more than two alleles or a
7 variance at each location. You know each person can only
8 have two, one from your mother and one from your father. If
9 you see more than two, more than one contributor, you can
10 associate any allele or variance that's up at one level, as
11 coming from one contributor, who we call a major
12 contributor. And the alleles that are down lower in all
13 relative to each other, are what we call a minor
14 contributor. In this case, the major contributor to the
15 mixture was the same as Mya Ramirez, the victim. The minor
16 contributor came from the unknown male.

17 Q. What further testing were you able to do with
18 respect to one A-2 with regard to the minor contributor?

19 A. We also put it through YSTR testing to amplify
20 only the YSTR and the male contributor. We did get YSTR
21 results that was a mixture of at least two male individuals
22 that were found in the same stain.

23 Again, in this case, there was a major
24 contributor, and the profile of the major male contributor
25 in that YSTR on the stain was consistent with the same

Chillseyzn - People - Direct

874

1 unknown males found in stain one A-1.

2 Q. As part of the evidence that you received -- I'm
3 sorry, as part of the items you received in this case, did
4 you receive a buccal swab from Daniel Ramos?

5 A. Yes, we did.

6 MR. PERRI: I ask what was marked as People's
7 7 for identification be shown to the witness.

8 THE COURT: It may.

9 (Whereupon, People's Exhibit 7 was handed to
10 the witness.)

11 Q. Do you recognize what was contained in the
12 envelope of People's 7?

13 A. I do.

14 Q. What do you recognize that to be?

15 A. The outer package of the buccal swab I received
16 from -- taken from Daniel Ramos. I recognize it because the
17 case number, the initials and date, and the time I analyzed
18 it, or had written it in my handwriting on the back.

19 Q. When you received that envelope containing the
20 buccal swab, was it in the same state as it is presently?

21 A. No, it was sealed, closed here. I made the
22 cutting here to remove the swabs and then sealed it back up
23 when I was done.

24 Q. And other than that, is it in the same or
25 substantially the same condition?

Chillseyzn - People - Direct

875

1 A. Yes.

2 Q. Where are the actual swabs contained therein?

3 A. The swabs are contained in our laboratory.

4 MR. PERRI: I ask People's 7 be received in
5 evidence.

6 THE COURT: Mr. Berger, would you like to see
7 it?

8 MR. BERGER: Please.

9 Voir dire, please, Judge.

10 THE COURT: You may.

11 VOIR DIRE EXAMINATION

12 BY MR. BERGER:

13 Q. What is it that is contained here if the buccal
14 swab is retained in your lab?

15 A. It's just packaging.

16 MR. BERGER: Oh, just packaging. No problem.
17 No objection.

18 THE COURT: Let's have it marked as People's
19 7 in evidence.

20 (People's Exhibit 7, previously marked for
21 identification, was marked and received in evidence.)

22 MR. PERRI: I ask it be returned to the
23 witness.

24 (Whereupon, People's Exhibit 7 was handed to
25 the witness.)

Chillseyzn - People - Direct

876

1 DIRECT EXAMINATION

2 BY MR. PERRI: (Continuing)

3 Q. Once you removed the buccal swab delivered to you
4 in that envelope, you have testified it was sealed. Once
5 you removed the buccal swab from the envelope, what, if any,
6 testing did you conduct on the swab?

7 A. A cutting of the swab was sent for the same
8 analysis that I described earlier as the four-step process.
9 We were able to develop a DNA profile for Daniel Ramos.

10 Q. Did you compare the profiles that you developed
11 from stain one A-1 and one A-2 that you testified were
12 consistent with one another, did you compare those profiles
13 with the profiles you developed from the buccal swab?

14 A. I did.

15 Q. What was the result of that comparison?

16 A. Pertaining to the underwear stain, one A-1 where
17 we had the YSTR profile, the YSTR DNA profile, Daniel Ramos,
18 obtained from underwear one A-1. Meaning that, Daniel Ramos
19 and all patrilineal male relatives, cannot be excluded as
20 being the source of that DNA.

21 That is one of the drawbacks of Y DNA analysis.
22 You are going to have the same Y DNA profile as all
23 patrilineal male relatives, meaning your father, any
24 brothers, cousins, uncles on that side, male children,
25 because you are not getting half of that DNA from your

Chillseyzn - People - Direct

877

1 mother. There is no cross over. It's not individualized.
2 It's the same DNA as you and all of your male patrilineal
3 relatives.

4 As pertaining to stain one A-2, we had an
5 autosomal profile. That profile was consistent with the DNA
6 profile of Daniel Ramos and the YSTR DNA profile obtained
7 stain one A-2, was consistent with YSTR DNA profile of
8 Daniel Ramos.

9 Q. Now, did there come a time when you conducted a
10 statistical analysis of all of your findings from the
11 genetic materials found on the two stains?

12 A. I did.

13 Q. Could you please explain what the results of that
14 statistical analysis was?

15 A. Sure. The combination of YSTR DNA alleles found
16 on stain one A-1, where the full single source YSTR DNA
17 profile was expected to be found in approximately one and
18 1,171 individuals.

19 For the stain one A-2, with the autosomal and the
20 YSTR DNA profile available, you expect to find that
21 particular combination of alleles present in the evidence in
22 approximately one and 175 million individuals.

23 Q. Is the statistical analysis that you performed
24 accepted in the scientific community?

25 A. It is.

Chillseyzn - People - Cross

878

1 Q. Is the DNA analysis you performed at all stages on
2 the underwear, of the buccal swab, both buccal swabs, DNA
3 analysis that you conducted, is that accepted by the
4 scientific community?

5 A. Yes.

6 MR. PERRI: Thank you. Nothing further.

7 THE COURT: Cross-examination, please.

8 CROSS-EXAMINATION

9 BY MR. BERGER:

10 Q. Mr. Chillseyzn, is that how you say your name?

11 A. Yes, that will do. Sure.

12 Q. It's just spelled differently?

13 A. Very differently, yes.

14 Q. Did I hear you say that you have a bachelor's
15 degree in biology?

16 A. Yes, sir.

17 Q. Is that the extent of your formal education?

18 A. Yes.

19 Q. Are you a member of any professional
20 organizations?

21 A. Not at the present time, no.

22 Q. Now, did you say that you had to be tested every
23 six months or so in order to see if you were complying with
24 the appropriate procedures?

25 A. It's to prove we're still proficient in the

Chillseyzn - People - Cross

879

1 procedures we use for the testing.

2 Q. So, I assume that the times when you are tested --
3 not just you tested, your colleague, you are not proficient?

4 A. To my knowledge, it's never happened to anyone in
5 my laboratory.

6 Q. In your lab?

7 A. Right.

8 Q. Now, what is ASCLD?

9 A. ASCLD stands for American Society of Crime Lab
10 Directors. That's the accrediting agency that accredits our
11 laboratory.

12 Q. Where did they get their authority from to make
13 them an accredited laboratory?

14 A. I'm not really sure. I know that they're a
15 national foundation. They're considered the accrediting
16 body for DNA laboratory, at least that you want to hold your
17 accreditation from. Every five years they do a major audit.
18 We recently passed ours last year, and there are yearly, I
19 guess, update checks. However, we're audited by other
20 agencies on a biyearly basis and have to do an internal
21 audit on intervening years.

22 Q. Why is it necessary to be audited by other
23 agencies if you have ASCLD?

24 MR. PERRI: Objection.

25 THE COURT: If you know.

Chillseyzn - People - Cross

880

1 A. ASCLD audits are only done every five years.
2 Requirements are that you have an outside agency audit the
3 laboratory every other year.

4 Q. That's to see if the procedures are in accordance
5 to where they should be?

6 A. Yes, to make sure that our policy procedures
7 follow national mandated guidelines, and to ensure that
8 we're following those procedures with our recordkeeping
9 practices and personnel.

10 Q. Who pays ASCLD?

11 MR. PERRI: Objection.

12 THE COURT: Sustained.

13 Q. Does your lab pay ASCLD for the testing?

14 A. I wouldn't know, sir. I'm sorry.

15 Q. It is true that there's DNA evidence on those --
16 on the stains one A-1 and one A-2, from at least two
17 contributors, correct?

18 A. There was a mixture of DNA on stain one A-2.

19 Q. Right. And the mixture could be consistent of
20 saliva or epithelial cells, correct?

21 A. It's a mixture of DNA. I really can't speak about
22 what source cells they came from.

23 Q. Because you cannot separate them, you cannot
24 separate DNA whether it be saliva or epithelial cells?

25 A. I'm not sure I understand your question. I

Chillseyzn - People - Cross

881

1 believe what you are saying is correct. Yes, we can say the
2 presence of saliva was indicated on the stain. Once it
3 comes down to breaking open the cells, and everything, you
4 can't say what cell that DNA came from.

5 Q. Right. You cannot say whether it's saliva or
6 epithelial cells?

7 A. No, sir. That's correct.

8 Q. You did tell us there were two male contributors
9 to the stain, correct?

10 A. Yes. The YSTR indicated two males present on
11 stain one A-2.

12 Q. Did you test the non-stained portion of the
13 underwear?

14 A. No, sir, I didn't.

15 Q. Just so the record is clear, you tested what you
16 were -- what you saw were two stains, you cut them out, you
17 tested them?

18 A. It sounds correct.

19 Q. But you didn't test the non-stained portion of the
20 underwear, correct?

21 A. Right. When we examined the item --

22 Q. Just answer yes or no. Is that correct?

23 A. I did not test the unstained portion of the
24 underwear.

25 MR. BERGER: Thank you. I have nothing

Chillseyzn - People - Redirect

882

1 further.

2 THE COURT: Any redirect?

3 MR. PERRI: Very briefly.

4 REDIRECT-EXAMINATION

5 BY MR. PERRI:

6 Q. Just to clarify, Mr. Chillseyzn, with respect to
7 stain one A-1, was there a mixture of more than one male DNA
8 profile on stain one A-1?

9 A. No, that was a single source male YSTR DNA profile
10 on DNA.

11 Q. And was the single source YSTR DNA profile you
12 developed on stain one A-1, was that consistent with the DNA
13 profile that you developed from the buccal swab of Daniel
14 Ramos?

15 A. They were the same profile.

16 Q. With respect to one A-2, you did say there were
17 two profiles, YSTR, the major contributor of the YSTR DNA --

18 MR. BERGER: Objection. Not proper redirect.

19 THE COURT: Overruled.

20 Q. The major contributor of the DNA -- YSTR DNA
21 contained on stain one A-2, was that consistent with the DNA
22 profile of Daniel Ramos?

23 A. The major male contributor found YSTR DNA profile
24 was consistent with the YSTR DNA profile of Daniel Ramos.

25 MR. PERRI: Thank you, your Honor. Nothing

Proceedings

883

1 further.

2 THE COURT: Any recross?

3 MR. BERGER: No, your Honor.

4 THE COURT: Given the hour, we'll stop here
5 for today. I'll ask you be back here tomorrow at ten
6 a.m., and we'll get started as soon as everybody
7 gathers up.

8 Remember to keep an open mind throughout the
9 trial. Do not discuss the case amongst yourselves or
10 with anyone else during the trial. Do not permit
11 anyone to discuss the case in your presence. Do not
12 talk to the lawyers, witnesses, or the defendant about
13 anything during the trial, and remember, if you run
14 into any of us, we'll ignore you. Do not take it
15 personally.

16 Do not visit or view the place where it was
17 allegedly committed, or any other place involved in
18 this case.

19 And any news coverage of the case, do not
20 read, view or listen to any accounts or discussions of
21 the case reported by the news media, and do not attempt
22 to research any facts, issue or law related to this
23 case, whether by discussion with others, by research in
24 the library, on the Internet, or by any other means or
25 source. Have a greet evening. See you all tomorrow at

Proceedings

884

1 ten a.m.

2 (Whereupon, the jury exited the courtroom.)

3 THE COURT: Anything for the record,

4 Mr. Berger?

5 MR. BERGER: No, your Honor.

6 THE COURT: Anything for the record, People?

7 MR. PERRI: No, your Honor.

8 THE COURT: See you tomorrow at 10:00 a.m.

9 (Whereupon, the trial was adjourned to May
10 13, 2015.)

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COPY

885

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 43

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 742N/14

5 -against- :

6 DANIEL RAMOS, :

7 Defendant. : Jury Trial

8 -----X

9 May 13, 2015
262 Old Country Road
Mineola, New York

10

B E F O R E:

11

12 HONORABLE TERESA K. CORRIGAN,
Acting Supreme Court Justice

13

A P P E A R A N C E S:

14

(As Previously Noted)

15

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* * * * *

17

18 THE CLERK: Case on trial continued,

19 Indictment 742N of 2014. People of the State of New

20 York vs. Daniel Ramos.

21 Let the record reflect, all parties are

22 present. The jury is not present at this time.

23 Are the People ready?

24 MR. PERRI: Yes, your Honor.

25 THE CLERK: Defense counsel ready?

kmm

Proceedings

886

1 MR. BERGER: Yes, but there will be an
2 application that I have. I know you have other matters
3 you want to bring to our attention first.

4 THE COURT: Let's take care of what we have
5 been advised of earlier this morning. My law secretary
6 got a call from juror number seven, Mr. Lawrence
7 Fischer, advising her that his father passed away
8 suddenly yesterday and that he was on his way out of
9 town and needed to quote/unquote get off the jury.

10 In light of that information that has been
11 brought to my attention, it's the Court's intention to
12 replace juror number seven with the current alternate
13 number one, Bradly Cammarano.

14 Mr. Berger, I'll hear you on that.

15 MR. BERGER: I understand, I assume he's not
16 intending to come back any time soon and --

17 THE COURT: That is my understanding that he
18 couldn't come in today. We asked him if he could come
19 here this morning so we could speak to him on the
20 record and have a colloquy on the record, and he
21 advised my law secretary he was already heading out of
22 state and was not able to come, and again, quote,
23 needed to get off the jury.

24 So, I have no reason to believe that he is
25 coming back any time soon. I will do this, he did

Proceedings

887

1 leave a cell phone number. I could have my staff call
2 and just confirm that when he said, get off the jury,
3 that was because his travels out of state would prevent
4 him from coming back in a reasonable amount of time. I
5 would have no problem losing one day, but then losing
6 tomorrow and potentially losing days next week, I would
7 not be willing to do.

8 MR. BERGER: That would interfere with -- I
9 have issues with respect to that as well.

10 THE COURT: Do you want my staff to make a
11 follow-up call to confirm that out of town meant he's
12 not available to come back, or are we looking to --

13 MR. BERGER: I have no reason to disbelieve
14 somebody made a statement like this. If you do, I
15 don't mind if you call, but I --

16 MR. PERRY: People have no opposition?

17 THE COURT: I don't have any reason to
18 disbelieve it. It seems like it was a sudden event and
19 some level of shock to the gentleman. We're going to
20 replace juror number seven with current alternate
21 number one.

22 That being taken care of, any application for
23 the Court before we bring in the jury and continue with
24 today's testimony?

25 MR. PERRI: Your Honor, just to explain the

Proceedings

888

1 next witness the People intend to call, we received the
2 name from the NICE bus company of the person yesterday.
3 I spoke with defense counsel, and he happened to call
4 another issue and inform him of the Court. Her name
5 was Diane Iallenti.

6 MR. BERGER: Spell, that please.

7 MR. PERRI: I-A-L-L-E-N-T-I, that she would
8 be who would be provided from the parent company of
9 NICE bus. The actual operating company is called
10 Transdev, T-R-A-N-S-D-E-V. It's the current form of
11 what previously was the Violi Transportation Company
12 that took over the operation of public bus system in
13 Nassau County from MTA. She brought with her today
14 documents related to the requirements of the
15 defendant's employment with the bus company,
16 specifically germane to his ability to speak English.
17 That is the sole purpose of the People calling this
18 witness. We are not seeking any, of course, prohibited
19 character evidence about how he performed his duties
20 and that the documents that the People would be seeking
21 for her to use and ask as business records to be
22 entered into evidence if the Court finds the foundation
23 is properly laid are simply related to his ability to
24 speak English, your Honor.

25 THE COURT: Mr. Berger, would you like to be

1 heard on that?

2 MR. BERGER: I don't know that's an issue
3 with this trial. Nobody has ever disputed he couldn't
4 speak English, but to bring in -- and Mr. Perri has
5 provided me with what are the so-called requirements,
6 but I don't think this witness would know to what level
7 he speaks English and that he or she could testify to
8 that. I don't think it's relevant at this point. Why
9 is this necessary to this trial?

10 THE COURT: People.

11 MR. PERRI: Your Honor, if you recall from
12 the hearing at this trial, that was the bulk of defense
13 counsel's arguments as to why the statement taken from
14 the defendant, which was taken in English originally,
15 after his rights were read in Spanish to him, that was
16 the bulk of defense counsel's arguments as to why the
17 statement could not be properly attributed to the
18 defendant as he could not be fully aware of what he was
19 reading.

20 Additionally, the defendant does have, as his
21 right, a Spanish language translator in the courtroom
22 and the fact that the statements given is taken in
23 English, the issue is before the jury. It's very
24 limited testimony. It has nothing to do with anything
25 other than his ability to speak English. If defense

1 counsel were in the alternative to enter into a
2 stipulation of the defendant was able to read and speak
3 English at a level where he would be capable of
4 comprehending the statement that the People are
5 offering through Detective Baran, that would alleviate
6 the need to call the witness, but the People believe
7 the issue is both, has been presented previously by
8 defense counsel and it is before the jury in some form,
9 is the defendant using a translator in front of the
10 jury, your Honor.

11 MR. BERGER: Detective Baran can testify that
12 he speaks English. There's nothing that Mr. Perri
13 offered to the Court, he was offering this witness that
14 shows the witness speaks English. We don't dispute he
15 speaks some English. But, Mr. Perri, threw in the word
16 we, English as well, and this witness will not be able
17 to testify as to whether he reads English. And
18 certainly, the witness has no personal knowledge one
19 way or the other about the extensive ability to speak
20 it clearly or to read it at all. If the offer is that
21 he speaks English, we can stipulate that he speaks some
22 English, but not to what level he is going to speak it.

23 THE COURT: People, let me ask you this:
24 This witness has no personal interaction with the
25 defendant?

1 MR. PERRI: This witness, your Honor, this
2 witness does have personal interaction with a letter,
3 and the People are not introducing it, as we do not
4 seek to introduce that letter. The defendant wrote a
5 letter from the jail to his -- to the bus company in
6 English asking for the rights and control of his 401(k)
7 to be transferred to his family members. Although,
8 this witness doesn't have, other than that personal
9 knowledge of the defendant's ability, he was employed
10 by the company, multiple years by this company, and the
11 witness will testify the job requirements, he presented
12 English themselves. He stated he had to have the
13 ability to read and understand and interpret the
14 transit system and operation rules, regulations, policy
15 phases and routes, and that these documents
16 specifically, the regulations, the policies of the
17 condition were written in English.

18 Additionally, as part of the defendant's
19 personnel file, his acceptance offer for his acceptance
20 for the offer of his employment, which he signed was in
21 English and acknowledgments, various other
22 acknowledgments, including a form I-9, are also in
23 length, which he submitted, which also including a
24 photocopy of his ID.

25 THE COURT: People, how is this not more

1 appropriate maybe in a rebuttal setting? The fact that
2 Mr. Berger brought something up at a hearing is not
3 true positive that's the same arguments that is going
4 to be made at a trial. So, I don't know if it's maybe
5 the timing, the situation. I'm sitting here thinking
6 this is more of a potential rebuttal issue depending on
7 what comes out in cross-examination of these witnesses.
8 I don't see it as completely relevant yet.

9 MR. PERRI: Sure, if that's the Court's
10 position, I could inquire of the witnesses if they are
11 available to come back, either tomorrow or this
12 afternoon, after the People call the two detectives to
13 testify and that we could call them then if it becomes
14 an issue through defense counsel's cross-examination.

15 MR. BERGER: Could I talk to my client for a
16 second?

17 THE COURT: Yes.

18 MR. BERGER: Just so the record is clear, I
19 just inquired of my client with respect to the 401
20 letter. Somebody wrote it for him in the jail, which I
21 expected. In fact, as I look at the form Mr. Perri
22 provided to me, the I-9 form he refers to, you can see
23 that there's a signature by Mr. Ramos, but the
24 handwriting, as far as the address, it is clearly not
25 his. So, he could have taken the form home, signed it,

1 had it been read to him by family members. He's
2 looking to get a job. He's been at the job since 2007.
3 They're very happy with his work there.

4 I would suggest to the Court this is a straw
5 man that if they're looking to question. I mean,
6 listen, you have testimony from the detectives at the
7 hearing itself in which they asked him, would he want
8 to have rights read to him in English and Spanish and
9 he said Spanish. There's clearly a language issue
10 here, and we're going to get into the degree of skill
11 in speaking, in reading, in writing. I don't think
12 that's where we want to go, Judge.

13 MR. PERRI: As defense counsel just said,
14 he's going to get into the cross-examination, the
15 degree to which the defendant is able to speak Spanish
16 and speak English, and that is going to be part of his
17 cross-examination. If defense counsel makes that
18 representation, then his testimony, that part of his
19 job responsibilities were that he could read and speak
20 English is relevant to the statement being accurate.

21 THE COURT: All right. At this point, I
22 don't want to cross a bridge before we get there. I
23 appreciate, People, what you said, what Mr. Berger just
24 said. I did hear him. Again, that which we think
25 we're going to do, that which versus what actually

1 happens in the trial is not always the same thing. I
2 see this testimony at this point as potential rebuttal
3 only. I'm not saying it absolutely is. I don't see it
4 as relevant for the People's direct case in light of
5 the fact that this witness can only talk about
6 potential policy and not her personal interaction with
7 the defendant regarding these issues. I'm not going to
8 allow it in on your direct at this time.

9 Again, I will rehear arguments if you believe
10 it is appropriate potential rebuttal or possibly just
11 appropriate to have the witness called in a different
12 order.

13 MR. PERRI: Yes, your Honor.

14 THE COURT: What are the People intending on
15 doing today?

16 MR. PERRI: Can I inquire of the witness? I
17 know they have conflicts this afternoon, just to make
18 sure if they're available tomorrow morning.

19 THE COURT: Absolutely. If they are not
20 available until next week, I'll work around both sides'
21 schedules with witnesses.

22 Anything else for the record before I bring
23 the jury?

24 (Whereupon, there was a pause in the
25 proceedings.)

1 MR. BERGER: It's now come to my attention,
2 as a result of what I learned yesterday in the
3 courtroom, that the application I'm making is to recall
4 Sincere to this witness stand because I have now
5 learned something, I think the DA would know, or that
6 Sincere, in fact, was abused sexually when he was a
7 boy. Had I known this yesterday, I think that
8 information would have directly affected the perception
9 of him as a witness.

10 Now, it's not really my desire necessarily,
11 if I have to, yes, bring him back. Alternatively, we
12 could have Crystal come back and she could testify
13 about the fact that he was abused sexually as a boy by
14 his uncle, the father. In other words, the brother of
15 the father of Sincere and Mya. This, I believe, is
16 very likely possibly the basis for them going to child
17 guidance, South Shore Guidance Center. I don't know if
18 you have the records they provided them and you looked
19 at them. This becomes extremely important in this
20 case. It explains the behavior of the family. It
21 explains the family dynamics. We now know Crystal has
22 had one son, one child who was abused by another man,
23 and this is part of the family dynamics.

24 We also know from Mya's testimony yesterday
25 that this is a woman who beat her child with a belt.

1 This is a very slim, small, frail child. This is a
2 troublesome family. I think now, I understand, and
3 learned clearly, what the dynamics here is at this
4 trial.

5 Judge, I would rather not have to call them.
6 I think it could be resolved through stipulation. But,
7 it seems to me, based upon what I now learned, it
8 becomes really important as a basis in this trial to
9 understand the entire family dynamics of what was going
10 on there. It explains the manner in which Sincere
11 testified yesterday, which was in some ways more
12 pathetic -- it was more pathetic than Mya's testimony.
13 He had a very difficult time looking at anybody. He
14 paused at length before giving answers. It also
15 explains his testimony in which he claims that there
16 was oral admission by the defendant.

17 Judge, this is a factor. Had I known this, I
18 think it changes the entire scope and dynamics of the
19 people who testified here, and it becomes -- if the DA
20 won't stipulate, then -- and all he needs to do is
21 stipulate to the fact that, in fact, Sincere was
22 abused. I believe it was at least seven years ago and
23 it kind of explains his behavior on the witness stand
24 yesterday, and the answers that he gave and the upset
25 that he experienced, because I did not really know at

1 that time when I was cross-examining him that, in fact,
2 he suffered exactly what his claim to have been done
3 here. Our position is this was never done by the
4 defendant ever. Now we have testimony by the young
5 man, which had I known this or I could have asked
6 Crystal this as well.

7 Rather than bring them back, I think that a
8 reasonable way to resolve this is to have a stipulation
9 to that effect. I would ask you, since you have the
10 records from the child guidance center, if that, in
11 fact, is the basis for both kids going to counseling
12 there. And I would suggest that you take a look at
13 those records, if you haven't read them completely yet,
14 and I know they were rather a large volume of paper. I
15 don't know how much is substance and how much of it is
16 printed forms that you might have with the paper. But,
17 Judge, this becomes extremely significant, and it seems
18 to me I'm offering the Court, rather than bring back
19 the witness, another way to resolve the issue.

20 THE COURT: People.

21 MR. PERRI: The People oppose defense
22 counsel's application. Firstly, when defense counsel
23 requested this Court to obtain the therapy records of
24 this family, the People stated on the record it was our
25 belief that one of the reasons for the children being

1 engaged in therapy was the fact that Sincere, the older
2 brother, was a victim of a sex abuse case in which his
3 uncle -- which we stated on the record, was convicted
4 and sentenced to upstate sentence for an attempted
5 sexual abuse in the first degree.

6 Defense counsel cited no case law whatsoever
7 as to why even if he did try to bring this up at the
8 time, this would be admissible evidence in this trial
9 or proper basis for cross-examination, that this is not
10 a conviction against the child and also happened seven
11 years ago to a different child, not the direct, not the
12 actual victim in this case, and that as it was found,
13 as there was a conviction, a plea of guilty to upstate
14 sentence in that case, there is no basis to allege, or
15 assume, or try to state that did not actually happen,
16 and in any of the parties, the child, the mother or any
17 member of his family has made false statements based
18 upon the actual conviction of a prior perpetrator that
19 is not at issue in this case.

20 Defense counsel was aware of this while
21 Sincere was on the stand. Even then it would not have
22 been proper cross of that child or the mother of that
23 child.

24 THE COURT: I did have an opportunity to
25 finish reviewing all of the records from the guidance

1 center, and the Court will be returning the records to
2 the guidance under seal, as they are private and
3 confidential records. I will not disclose to either
4 party what the Court learned within those records
5 unless it is relevant to this case and this trial,
6 which is why you all received one piece of paper from
7 those records related to Mya Feliciano Ramirez and the
8 action here. There's nothing within the records of
9 Sincere that, again, makes them properly discoverable
10 by either party in that the law requires that the
11 records show detailed, delineates a witness's inability
12 to distinguish between truth and reality, a witness's
13 inability to recall events, a witness's inability to
14 understand the difference between the truth and a lie.
15 None of that exists in those records, so I will not be
16 turning over any other portion of those records.

17 Additionally, with regards to Mr. Berger's
18 application, one, I do recall it being stated on the
19 record, at the point in time that Mr. Berger said the
20 records may contain information related to the children
21 watching porn with the mother, thereby needing to have
22 therapy, the People placing on the record that the
23 reason for the therapy was related to domestic violence
24 and prior sexual abuse.

25 That being said, this Court does not know of

1 any legally proper reason why Sincere would have even
2 been allowed to be questioned about something that
3 happened to him completely distant and irrelevant to
4 this case while on the stand, by either the People or
5 the defense.

6 As such, I am denying Mr. Berger's
7 application to recall the witness. I'm denying any
8 requests to have there be a stipulation that discusses
9 Sincere's potential -- not potential. Sincere admitted
10 to victimization several years ago by an individual who
11 is now --

12 MR. PERRI: He's on parole at this point.

13 THE COURT: He's now still finishing out a
14 sentence for that action. That, in no way, in this
15 Court's mind, would impact his ability to recall, to
16 distinguish between truth and fantasy, to tell the
17 truth, or to be swearable. As such, the application is
18 denied.

19 Would you like to note your exception for the
20 record?

21 MR. BERGER: I'm also asking for Crystal to
22 be called back. What has happened here, Crystal had a
23 reaction when she observed -- when she says the pants
24 and pajamas and underwear of her daughter were down
25 around her ankles, and she had an immediate reaction

1 that her child was being abused just like her older one
2 was. I should be able to explain her reaction here,
3 Judge. So her knowledge of that becomes very
4 important. It doesn't have to be Sincere. I said to
5 the Court in my application, my preference is not to
6 call Sincere. My preference would be to call Crystal.
7 We're still on the People's direct case.

8 Now, that this is a fact that I am aware of,
9 and I see it affects this case directly from either
10 perspective. We're saying this never happened. We're
11 saying that Crystal jumped to a conclusion, and
12 influenced her six-year old girl into making a
13 statement that wasn't true. This is so intuitively
14 obvious to any observer that you have a mother who has
15 one child already abused by a family member, and now
16 she sees a daughter in a situation which is ambiguous,
17 and she comes to a similar conclusion, that is
18 something the jury should know. They should know that
19 because not only that -- I'm assuming, although, I
20 don't know the factual allegation, that there may have
21 been anal intercourse and you have a six-year old girl,
22 now seven, testifying about a pecker in the butt. She
23 sleeps in the same room with her brother. They both
24 know they're coming to testify in connection with this
25 case. This explains exactly where this girl Mya is

1 getting this information. The jury should know that.
2 I should be able to argue that to the jury, Judge.
3 It's not a hardship to recall Crystal.

4 In fact, you did indicate, Judge, if things
5 came out during the course of the trial which would
6 require you to reexamine your ruling with respect to
7 the records from the South Shore Guidance Child Center,
8 you would allow recall of witnesses. It seems to me,
9 whether it comes from that or not -- believe me, Judge,
10 you quoted what I said that the child's inability to
11 know the difference between a truth and a lie. That's
12 only one of many aspects of the witness. There are
13 other aspects of the witness, what motivated them to do
14 what they did, I'm presenting to the Court, but it's to
15 me, an obvious situation in which we know what
16 motivated Crystal to do what she did. I'm giving a way
17 out. You don't want to bring her in unless we
18 stipulate to this. The DA knows it's a fact to argue.
19 It's not a fact that applies in this particular case,
20 is to really close your eyes to reality. This is a
21 dysfunctional family. This is a woman who beats her
22 child with a belt if she does something wrong. This is
23 a woman who probably should have the kids taken away
24 from her, and we saw how Sincere acts on the witness
25 stand, and we see the various different stories that

Proceedings

903

1 Mya is telling. The Court is -- is it any harm to
2 anybody if we recall Crystal and ask her this question?
3 I think if the Court denies this application, then you
4 are saying that the defendant can't put in what is an
5 obvious defense here.

6 THE COURT: Counselor, I need to know, again,
7 what if you have at this point and if you don't, I will
8 give you a chance to bring it in. Do you have any
9 legal authority for this position about recalling
10 witnesses? I told you I would consider allowing you to
11 recall witnesses, or the People to recall witnesses, if
12 it was determined to be necessary. Do you have legal
13 authority for recalling the witnesses for what this
14 Court believes is extraneous and not legally proper for
15 this case to discuss something that happened to an ear
16 witness and partial eyewitness because the only thing
17 Sincere said he saw was a little bit of a young girl's
18 underpants and pajamas down around her ankle and hears
19 a statement.

20 You have a partial eyewitness and ear witness
21 discussing a current fact, and you are looking to
22 question the mother and/or that witness about a
23 completely unrelated incident that happened years ago,
24 having nothing to do with this action. How is it not
25 getting to collateral matters? How is that not going

1 beyond that which is legally permissible direct and
2 cross-examination? You don't have to answer me at this
3 point. My ruling is it's denied, but it's denied with
4 the understanding if I'm given any sort of authority on
5 this, I'll certainly look at it. I don't believe that
6 this is proper testimony to come out before this jury.

7 MR. BERGER: The only authority. There's not
8 going to be a case. When you have a trial going on,
9 the Court must make many determinations as to
10 relevancy.

11 THE COURT: And I have.

12 MR. BERGER: You think it's not relevant that
13 this witness and this mother has a child -- you called
14 Sincere an ear witness. It didn't have to be Sincere.
15 We all know it's a fact. We all know that Sincere was
16 abused by his uncle, the father's brother, and the
17 mother knows that and the mother knows her son was
18 abused, and you don't think the mindset of this mother
19 when she enters the kitchen becomes a really relevant
20 factor as to what is going on, that she jumped to a
21 conclusion in this particular case that her daughter
22 was being abused, and oh my God, this is the second
23 time, my second child and that this is not something
24 where I can give you a case to that point.

25 In a trial, there are, I'd say one hundred

1 times relevancy issues than a legal issue, a hundred
2 times more than a legal issue. This is not one of
3 those situations where I could provide you with legal
4 case in point.

5 THE COURT: Relevance is a legal concept.

6 MR. BERGER: You think I'm going to find a
7 case just like this in which --

8 THE COURT: It doesn't have to be just like
9 this, counselor. I'm sure there must be cases where
10 people's psychiatric backgrounds are either allowed in
11 or not allowed in.

12 MR. BERGER: Psychiatric?

13 THE COURT: Psychological. You are talking
14 about that. You are talking about the fact that
15 because you learned through therapy that somebody
16 became -- was placed into therapy because of a prior
17 sexual incident.

18 MR. BERGER: Forget the therapy. Excuse me,
19 Judge. I don't want to waste anymore time. Forget the
20 therapy. All I'm talking about is the mindset of
21 another mother. I don't care if the kids went to
22 therapy or didn't. All I wanted you to do, if you
23 looked at that and saw it was actually one of the
24 reasons why he was in therapy. You kind of suggested,
25 I don't know what the facts are. You talked about

1 somebody being abused. I don't know if it was physical
2 or sexual or what. My guess is it's sexual because
3 somebody, because the brother of the father went away
4 for seven years as Mr. Perri just said. But, what I'm
5 talking about, I'm not asking you to divulge anything
6 that was revealed in therapy, if you think it's --
7 unless you think it's extremely relevant to this case.
8 Forget that. I have a right. It seems to me, what the
9 mother knew at the time of this incident, is critical.
10 What her mindset was, was critical. She reacts in a
11 way in which she yells, what the fuck is going on.
12 That is pretty stark for a six-year old to hear, and
13 this is what her mindset was. She doesn't deny that
14 she said that.

15 So, what I'm saying to you is, we should be
16 able to explain why this woman reacted that way.
17 What's obvious, I had -- heaven forbid one child was
18 abused, now it might appear it might be a second. It
19 can't get anymore obvious than that, Judge, that this
20 woman's mindset is so critical to what? Because, if
21 not for this woman, this would have never happened. He
22 never gets arrested, but she jumped to a conclusion and
23 she did it because the defense seems -- because the
24 defense should be able to -- should be able to show her
25 motivation as to why she reacted in this way.

1 We know that the cases are legend in people
2 jumping to conclusions and here I have the perfect
3 opportunity to explain to this jury why this woman
4 jumped to this conclusion. It's right there before us,
5 admitted by Mr. Perri on the record that her son was
6 abused by a family member, an uncle. I mean --

7 THE COURT: I understand your position. I
8 understand the People's position. My ruling at this
9 time, I will not allow Ms. Ramirez to be recalled to be
10 questioned about what happened to her son years ago,
11 Ms. Crystal Ramirez.

12 I do not agree with you, Mr. Berger, she
13 reacted in a way that was based upon what happened
14 previously.

15 MR. BERGER: That's not your function.

16 THE COURT: I understand that, but I have to
17 make a legal ruling, counselor, and I have to determine
18 if she is relevant or not relevant. I appreciate you
19 said there is no harm. I don't make decisions based on
20 harm. I make decisions on legalities, and I make
21 decisions based on rules of evidence, and I make
22 decisions based on law. There's nothing before me that
23 makes this testimony relevant or legally proper, and I
24 will not allow it at this time.

25 Your exception is noted.

Proceedings

908

1 MR. BERGER: Is your ruling that's the
2 motivation of Crystal Ramirez as to what her mindset
3 was at the time is irrelevant?

4 THE COURT: You have my ruling, counselor.
5 Anything else for the record?

6 MR. PERRI: There's one more application by
7 the People.

8 With respect to Detective Baran, who is the
9 next witness that we anticipate calling in this case,
10 he will be testifying primarily about evidence
11 collection. He's the carrying detective, as well as
12 getting a statement from the defendant, a written
13 statement at the special victim quad.

14 However, in addition to that, Detective Baran
15 did speak with Crystal Ramirez and Mya Ramirez, and as
16 was testified to at the hearing, and now the People
17 believe specifically both relevant and admissible in
18 questioning Mya at the Nassau University Medical
19 Center, he did ask Mya whether or not something like
20 this had happened before after she had indicated that
21 the defendant had licked her coochie.

22 Defense counsel, in cross-examination of Mya
23 Ramirez, through cross-examination, portrayed her
24 disclosure of prior sexual acts by the defendant
25 against her as being a recent fabrication. That has

1 not been disclosed until far after the initial
2 disclosure about the original oral sexual contact
3 between the defendant and this then six-year old
4 victim. The People believe, as a rebuttal to that and
5 handing up to defense and to the Court, People vs.
6 Ludwig, a Court of Appeals case, that noted that in a
7 child sexual abuse case, that when it is alleged that
8 the child is now fabricating sexual abuse and
9 additional sexual abuse, that outcries are or also
10 outcries of prior rebuttal of that abuse is proper
11 testimony, as well as completing a narrative and
12 explaining procedures is relevant to revisiting the
13 credibility of the victim when she was given an
14 opportunity with a member of law enforcement in a
15 secure location.

16 She did disclose that the defendant had
17 previously abused her. The People were not allowed,
18 and it was not proper for the People to on direct to
19 have raised that evidence unless the defense had opened
20 the door, and the People's position is that they have.

21 MR. BERGER: I need to read the case. I
22 would point out before we even start with Detective
23 Baran, Detective Baran had -- had never made a notation
24 about this at all. So, you have had this because no
25 Rosario material was turned over to me about any

1 statement Mya made to him.

2 MR. PERRI: That is incorrect.

3 MR. BERGER: Mr. Perri, you point out where
4 you have provided me with that.

5 MR. PERRI: Although, there has not been
6 Rosario material turned over to that effect, provide me
7 one moment to find it in the hearing minutes. Defense
8 counsel brought this out on cross-examination of
9 Detective Baran.

10 MR. BERGER: I have to read the case before
11 we proceed.

12 THE COURT: Why don't you do that. We have a
13 jury waiting now.

14 MR. BERGER: Would you also note, we heard
15 from a neutral witness yesterday, the nurse, in which
16 she was presumably a skilled questioner. She was a
17 nurse, a sexual assault nurse, in which it was
18 established that if she had been told that by the
19 child, and she was the one who was more of a neutral
20 person than Detective Baran, that she would have made a
21 notation of it, and there was no notation at all, and
22 she was required to get an extensive history.

23 Now, Mr. Perri is seriously suggesting that
24 something Detective Baran said eleven months after the
25 incident, after this conversation where he didn't write

Proceedings

911

1 it down at all anywhere, if this doesn't, if this
2 doesn't encourage fabrication by anyone, police
3 officers, especially, then I don't know. We can't
4 count this kind of behavior.

5 THE COURT: Read the case. I want to note,
6 Mr. Berger, why it is you think the door hasn't been
7 thrown wide up open with regards to this type of
8 testimony based on your cross-examination yesterday.
9 The Court was willing to have it all kept out. I told
10 you as much, and the People instructed as much, and
11 it's not a problem. You will try your case the way you
12 want to try your case. It appears to me that the door
13 has been opened wide with regards to this.

14 MR. BERGER: To hearsay, Judge?

15 THE COURT: With regards to any statements
16 related to there having been prior abuse.

17 Now, with regards to whether or not Detective
18 Baran can continue to testify to this, I'll wait to you
19 read the case and then I will take your motion with
20 regards to that.

21 Do you have other testimony you could take
22 from Detective Baran excluding this portion so we can
23 at least get started and then everyone can read it over
24 the lunch hour? We're only going to work for about an
25 hour today. If you can't, that's fine.

Proceedings

912

1 MR. PERRI: Your Honor, it's part of the
2 narrative.

3 THE COURT: Okay.

4 MR. PERRI: I would be able to call Detective
5 Pacheco, who did the rights card, the People called for
6 the purpose of the rights card, as well as translation
7 of the apology letter. The only factor about the
8 apology letter would be moved in subject to connection
9 for Detective Baran to authenticate that as he
10 testified at the hearing, that the defendant wrote that
11 in his own hand. But that if the Court is accepting of
12 that, assuming it is proper foundation, then Detective
13 Pacheco can be called out of order.

14 THE COURT: I'm always accepting of items
15 going into evidence subject to connection as long as
16 they are not shown to the jury until after it was
17 connected.

18 MR. PERRI: The problem is, the detective
19 translated it because it's written in Spanish.

20 THE COURT: Let's go with the proper order.

21 MR. PERRI: I'm sorry, your Honor.

22 THE COURT: Mr. Perri, are you looking to
23 have this testimony come in for the non-hearsay purpose
24 of the sequence of events in the investigation, or are
25 you looking to do it for the truth of the matter?

1 MR. PERRI: It's not for the truth of the
2 matter. It is for -- as rebuttal to the allegation
3 that it is recent fabrication that the child reported
4 additional abuse, that the child made a statement that
5 she indicated to Detective Baran that this had happened
6 before, and that, although, it is also theoretically an
7 outcry and for the narrative of the investigation, the
8 specific reason the People now find to be overwhelming
9 probative, the defense accused child victim of failing
10 to report this and now suddenly is coming up with and
11 she reported it to Detective Baran as soon as she was
12 in the hospital and in a safe environment.

13 MR. BERGER: I'm still reading here,
14 Judge. It was disclosed to me yesterday through the
15 document you provided to me that she made this claim a
16 week or so after this alleged incident and that it
17 happened five times.

18 What was brought in was the fact that the
19 girl said to Mr. Perri, it happened, the girl said to
20 Mr. Perri a couple of weeks ago, it happened a month or
21 so earlier of the trial, once. And now she is saying
22 to Georgina, that it happened five times. It was
23 brought in solely to show the inconsistency of the
24 number of times she claims this happened in order to
25 show it didn't happen at all. As you charge a jury on

1 credibility and inconsistency, is important and
2 inconsistency is a reflection of lack of credibility.

3 THE COURT: If you turn to page eight of the
4 printed decision that I have before me, it lays out
5 exactly how the Court needs to behave and react. It
6 shows in this particular case that I'm reading, Ludwig,
7 from the Court of Appeals, 2014, it is the defense that
8 initially brought out testimony related to incidents of
9 sexual abuse, and it says here, since the defense
10 claimed that the complainant has made up these
11 allegations, the circumstances of her disclosure of
12 these circumstances are relevant to her credibility and
13 it goes on to talk about how the Court, New York Courts
14 have routinely recognized that nonspecific testimony
15 about a child victims' report of sexual abuse does not
16 constitute improperly bolstering when offered for the
17 relevant non-hearsay purpose of doing several things.
18 And here it talks about explaining the investigative
19 process, completing the narrative of the offense led to
20 the defendant's arrest, and when not offered for its
21 truth, but for the narrow purpose of explaining these
22 matters, it is allowed. It goes on to say --

23 MR. BERGER: I haven't read the case. I
24 can't even --

25 THE COURT: The bottom line is I appreciate

1 you haven't read the case, and the Court has read the
2 case. The Court believes from reading the case this
3 would be appropriate testimony from this officer.
4 Again --

5 MR. BERGER: The door was opened wide
6 yesterday by the cross-examination of a child victim in
7 this case. The revelation that it happened before,
8 it's not part of the indictment. There's one incident
9 that is charged in the indictment, one incident. It's
10 all about credibility. That's all it is. There's one
11 incident in the indictment.

12 THE COURT: There was a Molineaux application
13 with regards to this. I denied the Molineaux
14 application. I put everybody on notice that depending
15 upon what happened during this trial, that this
16 information regarding prior incident may be allowed to
17 come in. I cautioned the People to make sure it did
18 not come in inadvertently in any way, shape or form.

19 Mr. Berger, it was you, and you alone in
20 cross-examining the witness that brought this
21 information to light to the jury, and, in fact, you are
22 arguing that not only did this current incident not
23 happen, but none of the incidents of prior sexual abuse
24 happened in light of that. You have opened the door.
25 I believe that that is appropriate testimony now in

1 that you're appearing to have put forth some sort of a
2 lack of fabrication, lack of credibility of the
3 witness. This appears to be a proper response to that.

4 The Court will allow this testimony, and I
5 will note your exception to my ruling, for the record.

6 MR. BERGER: Will you allow me to read the
7 case so I could make appropriate argument? Now you are
8 cutting me off.

9 THE COURT: Mr. Berger, I have sat here, read
10 this case before, reread the case now. I don't, quite
11 frankly, need you to interpret the case for me. I've
12 read the case. I understand it's legal precedent and
13 it's ruling. I'm making this legal determination, as
14 is my job and my right to do, and although, I can give
15 you both the opportunity to make arguments, it's not
16 required that I stop a trial for, let's see, it's going
17 on 11:25. We were supposed to start at 10:00. So, we
18 now have been discussing various matters for 90
19 minutes. I made my legal ruling, noted your exception
20 for the record.

21 Is there anything else.

22 MR. BERGER: Time constraints are irrelevant
23 or less important. I would -- isn't irrelevant less
24 important consideration than getting it right? Judge,
25 your perspective with respect to allowing this and at

1 the same time denying me the opportunity to recall a
2 witness, I mean, Judge, it's just -- do you not see the
3 lack of objectivity by the Court to not allow me to
4 bring in what the defense feels is a very relevant
5 consideration? At the same time, to allow Mr. Perri to
6 bring this in without giving me the opportunity to
7 finish reading the case and make a legal argument
8 against it -- you may have read it before. That
9 doesn't mean you read it an interpreted correctly.
10 That's why you have defense counsel have the
11 opportunity to read testimony and present arguments
12 against it.

13 THE COURT: How long will you need? Maybe we
14 can call the jury in, they can leave and come back at
15 2:30 when you are good and ready to proceed. Would you
16 like until 2:30, counselor? Let's bring in the jury
17 and we will excuse them until 2:30.

18 Before the jury comes in, I'll see both of
19 you at 2:00. From 2:00 to 2:30, at the end of oral
20 arguments, we'll call the jury in at 2:30 and start
21 whether you are ready or not. I'm denying a second
22 past 2:30.

23 MR. PERRI: Yes, your Honor.

24 THE COURT: The record should reflect it's
25 11:25. The defense is given until 2:00 to come back to

1 court with whatever legal arguments he would like to
2 make to the Court. The People are also welcome to
3 provide other materials, if they so chose. I will ask
4 that if there is any cases that either side wants me to
5 read, that it is brought to this Court as soon as you
6 have obtained it so I do not have to delay in reading
7 any additional cases, should I choose to read those
8 additional cases.

9 MR. PERRI: Yes, your Honor.

10 (Whereupon, the jury entered the courtroom.)

11 THE CLERK: Do both sides stipulate all sworn
12 jurors are present, that juror number seven has been
13 replaced with the original alternate number two, who
14 was moved up to alternate number one, is now in seat
15 number seven, and the others have moved forward one
16 seat; agreed?

17 MR. PERRI: Yes.

18 THE CLERK: Agreed, defense?

19 MR. BERGER: Yes.

20 THE COURT: As I told you previously, there
21 comes a time when the Court has to attend to other
22 matters that sometimes my judgment of the time it takes
23 to do that goes askew. So I have personally misjudged
24 an issue that I need to deal with unrelated to this
25 case that's taking up a good portion of my morning and

1 rather keeping you sitting in the small jury room
2 wondering what is going on, I brought you in here now
3 at 11:30 to advise you that you will have a nice long
4 lunch.

5 I'll expect you to all be back in the jury
6 room at 2:15 sharp. We will start testimony, we'll
7 restart testimony in this case today at 2:30 sharp.
8 Please be back in the jury room by 2:15 so I have you
9 all in this courtroom by 2:30 sharp.

10 Please remember to keep an open mind
11 throughout the trial. Do not discuss the case amongst
12 yourselves or with anyone else during the trial. Do
13 not permit anyone to discuss the case in your presence.
14 Do not talk to the lawyers, witnesses or the defendant
15 about anything during the trial. And remember, if you
16 see us, we will ignore you. Do not take it personally.

17 Do not visit or view the place where the
18 charged crime was allegedly committed, or any other
19 place involved in the case.

20 And if there is any news coverage of the
21 case, do not read, view, listen to any accounts or
22 discussions of the case reported by the news media.

23 Do not attempt to research any fact, issue,
24 or law related to this case, whether by discussion with
25 others, by research in the library, or Internet, or by

Proceedings

920

1 any other means or source.

2 Hopefully you all have a few errands you can
3 run. I'll see you at 2:30.

4 (Whereupon, the jury exited the courtroom.)

5 THE COURT: See you all at two o'clock.

6 (Whereupon, a luncheon recess was taken.)

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3 (Whereupon, People's Exhibits 8, 9, 10, and
4 11 were marked for identification.)

5 THE CLERK: Case on trial continued,
6 Indictment Number 742N of 2014, People of the State of
7 New York vs. Daniel Ramos.

8 All parties are present. The jury is not
9 present at this time.

10 People ready?

11 MR. PERRI: Yes, your Honor.

12 MR. BERGER: Yes, your Honor.

13 THE COURT: I've given both parties the
14 opportunity to use the last couple of hours to look at
15 any case law they wanted to or do any research they
16 wanted to with regards to the People's most recent
17 application, seeking to allow Detective Baran to
18 testify to statements he obtained from the child, Mya
19 Ramirez, while in the hospital, on the day in question,
20 related to a prior act of sexual contact by the
21 defendant. The People's request, as I understood it,
22 came as a recent fabrication request, and the People
23 handed up the case of Ludwig from the Court of Appeals.

24 Counselor, I have given you an opportunity to
25 read the Ludwig case and any other case you felt was

1 appropriate in the Court's determination as to whether
2 or not this should be allowed, and I'll hear from you
3 now, Mr. Berger.

4 MR. BERGER: The statement I'll make should
5 circuit this entire matter. Mr. Perri made
6 representations to the Court, that just wasn't
7 accurate. There is no statement in the hearing minutes
8 that Mya told Detective Baran anything. Detective
9 Baran testified that he learned this from a statement
10 taken by Office Tedeschi that was given to Officer
11 Tedeschi by Crystal Ramirez. If there's another
12 section in the minutes he says he spoke to Mya, then
13 let him give me the page. But the page I have, which
14 is page 98 of the hearing minutes, he said he got that
15 from a statement that was provided to him by Officer
16 Tedeschi that he took from Crystal. It's almost triple
17 hearsay.

18 THE COURT: On that point, let me hear the
19 People if there is some other page. If not, read the
20 minutes of the hearing over the break.

21 MR. PERRI: One of the places on page 138 of
22 the hearing minutes where the defendant's
23 cross-examination of Detective Baran.

24 "QUESTION: Did you have a conversation with
25 Mya?

1 "ANSWER: Yes.

2 "QUESTION: And what did she say to you and
3 what did you say to her?

4 "ANSWER: I said, what happened today? And
5 she said, Danny ate my coochie, and she said, or she
6 said, he ate my coochie. And I said, who? And she
7 said, Danny. I asked her, has this ever happened
8 before? And she had said, yes. And I said, okay,
9 we'll talk later.

10 MR. BERGER: We should have a hearing, what
11 is depicted on the page. It's contrary to what he just
12 said and what he --

13 THE COURT: Contrary to what was just said?

14 MR. BERGER: Contrary to what Mr. Perri just
15 read, what he said was he learned there from a
16 statement given by -- that he read that Officer
17 Tedeschi took from Crystal.

18 THE COURT: What page are you referring to?

19 MR. BERGER: Page 98.

20 THE COURT: Page 98 and 138 are nowhere near
21 each other.

22 MR. PERRI: The People aren't saying there
23 are not multiple reports, that what Officer Tedeschi
24 gained from Crystal was that Crystal reported that Mya
25 also told her when she questioned her, has this ever

1 happened before, that her daughter told her, yes, it
2 had, and Officer Tedeschi included that in his
3 supporting deposition of Crystal Ramirez. Detective
4 Baran became aware through Officer Tedeschi and Crystal
5 Ramirez and did ask Mya herself.

6 THE COURT: The only thing I would allow, if
7 I'm going to allow it, that which Detective Baran
8 learned directly from the child and not that which
9 Detective Baran may have learned from Crystal or from
10 any other officer.

11 So, with the understanding that page 138 of
12 the hearing minutes has a very simple answer to a
13 simple question about has this happened before, I will
14 hear from you again, Mr. Berger, with regards to
15 whether the Court should allow that very limited
16 statement to be elicited from Detective Baran.

17 MR. BERGER: You are assuming we got past the
18 previous hurdle. Let me point out to the Court, the
19 Ludwig case that the Court cites is totally irrelevant
20 with a cap to it.

21 THE COURT: You don't need to because I will
22 say upon a further reading of Ludwig, I don't find that
23 to be a controlling case for recent fabrication at the
24 People's request. You and I would be in agreement with
25 that.

1 However, I did find two cases that are
2 directly on point for the People's request of recent
3 fabrication, those cases being People of the State of
4 New York vs. Nathaniel McClean, M-C-C-L-E-A-N, Court of
5 Appeals 69 NY2d, 426, from 1987, followed by a Second
6 Department case, People vs. Tilipman, T-I-L-I-P-M-A-N,
7 at 144 AD2d, 602.

8 It is, in fact, those cases that guide the
9 Court with regards to when testimony should be allowed
10 in based on recent fabrication, and the Court has to
11 take a couple of steps before we even get there.

12 The first thing I have to determine is
13 whether or not a cross-examination that has, in fact,
14 opened up. Let me back up. The first thing I have to
15 determine is whether the cross-examination, whether, in
16 fact, or through -- whether, in fact, or through
17 inference, has, in fact, put forth testimony of that
18 which can be seen as a recent fabrication.

19 And then, if, in fact, the Court gets to that
20 first portion, then the testimony can come from someone
21 other than the actual witness who said it, and that
22 case is People vs. Dobransky, '89 AD2d, 250. So you can
23 call a separate witness to talk about it, but that
24 testimony does not come in to prove or disprove any of
25 the facts in issue, but rather to aid and establishing

1 the credibility of the witness. That's what I need to
2 do. That's the evaluation I need to make before I can
3 make a determination as to whether Detective Baran can
4 either testify to this.

5 MR. BERGER: I have the McClean case. The
6 McClean case supports my position here. The People
7 haven't established when the so-called recent
8 fabrication exists. The cases I cited, given to the
9 law secretary, simply say it is rare, it's a rare
10 occurrence whenever there is a recent fabrication.
11 What happened here, the People say a recent
12 fabrication. We're saying it's a fabrication from the
13 time of the arrest. We're saying that she made it up
14 at that point. Now you have to find -- the People have
15 to establish that it's, in other words, it's subsequent
16 to that, that she changed her story in order to
17 counteract. For whatever reason, she had motive for
18 recent fabrication. The People haven't establish that.
19 If you look at the case I cited --

20 THE COURT: Counsel, let me say this for the
21 record. I asked you all to bring me cases if you had
22 it. You brought me cites. I don't have to sit here
23 now and start printing out the cases. I prefer you
24 actually brought the cases to me so they could have
25 been read. I have to sit here -- you have seven

1 minutes because I'm bringing the jury in at 2:30 to
2 talk about these cases that I don't have them in front
3 of me, because you did not bring me copies of them.

4 MR. BERGER: The basic premise, if you look
5 at McClean and the other cases, it is clear you can
6 never bolster. You can never bolster, never bring in a
7 prior consistent statement.

8 THE COURT: I'm fully aware of that. I'm
9 aware of McClean, and I'm aware of what I stated to
10 you. I know what the analysis of what I need to do.
11 Is it your position the People have not met their
12 burden with regards to the fabrication?

13 People.

14 MR. PERRI: During the cross-examination of
15 the complainant, the victim, the alleged victim, Mya
16 Ramirez, defense counsel made multiple arguments about
17 how Mya Ramirez was presently lying and fabricating the
18 alleged earlier assaults that had taken place against
19 her by the defendant to which defense counsel opened
20 the door in his cross-examination. He made statements
21 suggesting that she made them up to her counselor, it
22 was subsequent to the date of arrest when she attended
23 counseling with Gabriella, I believe was her name, in
24 the Freeport Counseling Center. Separate from that, he
25 made reference to her disclosing to the DA's office, to

1 myself, and insisting only after -- not at the time of
2 the arrest, not when this first happened, but only
3 later did she suddenly come up with the prior alleged
4 instances of abuse.

5 The People's position would be that such
6 inferences, and allegations, and arguments of defense
7 counsel that Mya Ramirez was lying and fabricated both,
8 whether or not the original statement, as well as the
9 later allegations, but that these fabrications and her
10 testimony on the stand itself was a fabrication to fit
11 the requisite of the rules of the case and that the
12 fact that the fabrication under People vs. Singer, 300
13 NY 120, cited in Richardson, is defined as making up a
14 false story after the events in order to fit the
15 exigencies of the case that the allegations she was
16 doing that on the stand, as well to her counselor, and
17 as well in meeting with me, fulfills the initial step.
18 The Court must take as to whether or not
19 cross-examination will raise the issue, your Honor.

20 MR. BERGER: That cite doesn't at all
21 disprove anything that I said to the Court. Mr. Perri
22 has to establish that there was a reason for her recent
23 fabrication. What we're seeing is any fabrication that
24 occurred, occurred at the time they arrested the
25 defendant. She had motive to fabricate then and she

1 continues to motive to fabrication.

2 The fabricate -- imagine a situation, Judge,
3 in which a witness, victim one says the defendant
4 committed this crime against me, and then goes on to
5 say, not only did he commit this crime against me, but
6 he did all kinds of other things to me, and he or she
7 keeps repeating these things on and on and on. You
8 say, I couldn't bring out the inconsistencies between
9 the original claim of a crime and these additional
10 attempts to bolster her allegations. Mr. Perri has
11 failed to establish the motivation for a recent
12 fabrication. What we're saying, knowing recent
13 fabrication occurred way back when this arrest was
14 made, and she's made inconsistent statements subsequent
15 to that. Those are inconsistent, Judge, which I'm
16 allowed to bring out. Any time a witness, who is a
17 complainant in a case, makes inconsistent statements
18 with what was originally said, and in this case that it
19 happened once before, that it happened five times
20 before, that it didn't happen, because when your Honor
21 heard the nurse testify yesterday, we have cases that
22 show, that I cited the Boyden case, the Bishop case to
23 your law secretary, in which she was asked by Nurse
24 Kathleen, whoever testified yesterday, and she said
25 nothing to her about it, and omissions in telling the

1 story also constitute an inconsistent statement. And
2 so, there are times when she said it didn't happen at
3 all, in any other instance, that it didn't happen, that
4 it happened once when she told Mr. Perri a few weeks
5 before trial, and that it happened five times when she
6 saw the therapist or the counselor at South Child
7 Guidance Center.

8 These are all inconsistent statements with
9 what she is saying happened. The fact I bring out
10 those, I can't be precluded from bringing out the
11 inconsistencies. Mr. Perri has to show there was a
12 motive on her part.

13 THE COURT: Where were you getting that he
14 has to show a motive?

15 MR. BERGER: That's what recent fabrication
16 requires. That's the whole idea, is that it is recent.
17 The language --

18 THE COURT: I understand the whole point
19 behind motive, counselor. I understand from the cases
20 very well, that the Court is to look at whether or not
21 the witness at the time of the events has the same
22 motivation to say X, as the witness did at the time
23 they took the statement.

24 For example, if the person is a
25 co-conspirator, their motive to say something favorable

1 to them at the time of arrest is exactly the same as it
2 is at the time they take the stand. However, that is
3 distinguished from someone who could be seen as a
4 cooperator, who was not facing the same charges as the
5 individual against who he is cooperating against.

6 I completely understand what you are saying,
7 that as I understand the cross-examination that
8 occurred, you went through great detail with this child
9 about talking to Perri, as he was referred to by the
10 child and then adopted by you in your
11 cross-examination, because that's what she was calling
12 him. Mr. Perri, she called Perri. You went through
13 great details getting out from her exactly when it was
14 in the very recent past that she, for the first time,
15 came up with this testimony and evidence about having
16 been abused before. That, in and of itself, from your
17 cross-examination, appears to fit the criteria that the
18 Court needs to find and evaluate in determining whether
19 the very limited statement of Detective Baran, which
20 would go to credibility only, would be allowed to be
21 elicited by the People.

22 MR. BERGER: She said it a week after, five
23 times that it happened. She is claiming it happened
24 five times. With Mr. Perri, she says once. It's a
25 fabrication. If it's still an inconsistency with

1 respect to the time of the incident, maybe a week or so
2 after the incident. The point is, you have to
3 demonstrate that there was a motive for the child to
4 lie and what I'm saying, to change the testimony and
5 make it a lie -- what I'm saying is all of her
6 statements are inconsistent. That's all.

7 THE COURT: I understand your position.

8 MR. BERGER: When you look at the recent
9 fabrication cases, you have to determine when there was
10 a point where there was a motive to lie. That's what
11 the Court must do, and what I'm saying, nothing
12 changed. Our position is that motive to lie occurred
13 at the time of the arrest. She perpetuated that with
14 the counselor at the South Child Guidance Center and
15 perpetuated with Mr. Perri, only they're different
16 statements. You can't bring in anything consistent
17 that you know -- you cannot bring in anything
18 consistent unless you come up with the point in time
19 where there is a recent fabrication. It's not
20 sufficient for Mr. Perri to argue. She said it to me a
21 couple of weeks before the trial. That's recent? No,
22 she is merely perpetuating, and there is no motive at
23 that point except for anything to continue the
24 fabrication, and I'm pointing out the inconsistency and
25 that's all.

1 THE COURT: You are the only individual that
2 brought it out. Mr. Perri didn't bring out anything.
3 You are the only individual who brought out these
4 facts, and I understand you are now arguing that this
5 was nothing more than an inconsistent statement.

6 MR. BERGER: Yes.

7 THE COURT: However, I don't see it that way
8 based on my reading of these cases.

9 MR. BERGER: That's what defense counsel
10 does, or any counsel when you are cross-examining and
11 statements differ from what the witness has said, you
12 bring them out as inconsistent statements.

13 THE COURT: Let me read to you the only part
14 of Ludwig that I find have any sort of credence and now
15 I've gone past 2:30, and this will be the end of the
16 discussion.

17 There is a concurrence in Ludwig that is
18 obviously informative to all of the parties. I suggest
19 you read it when you have the time. In the main
20 opinion, the following statement is really very
21 appropriate for this case, and this comes at a point --
22 I'll just read it. Of course, if the complainant
23 disclosure was offered for the truth of the matter
24 asserted, that the abuse actually happened, her own
25 testimony fell outside any hearsay exception. The

1 defendant did not object to the complainant's
2 testimony, though. The hearsay that he complains about
3 was, therefore, already admitted. The defendant's real
4 grievance is that other witnesses repeated the hearsay,
5 but since the defendant claimed that the complainant
6 had made up the allegations, the circumstances goes of
7 her disclosure were relevant to her credibility, not to
8 the truth of the matter asserted, to her credibility.

9 MR. BERGER: What the Ludwig case is simply
10 about, let me cite to you --

11 THE COURT: No, you are not. I told this
12 jury they are coming in at 2:30 sharp.

13 MR. BERGER: We have to get it right.

14 THE COURT: Counselor, I have to make a
15 decision, whether I get it right or wrong, the decision
16 on the law belongs to the Court. I have given you all
17 more explanation than I even need to. I've given you
18 the cases I relied upon for that explanation. I'm
19 instructing Mr. Perri and giving an instruction to the
20 jury if you would like me to, that that very limited
21 testimony that does not describe the nature of the
22 prior contact and conduct, but simply says it occurred,
23 may come out. It's for credibility purposes only,
24 based on my reading and my understanding of the caselaw
25 that I found over this lunch break. That is my ruling.

1 Would you like to note an exception?

2 MR. BERGER: For credibility purposes.

3 THE COURT: That's the only thing it can be
4 for, counselor. When you read the cases, you will see
5 that.

6 (Whereupon, the jury entered the courtroom.)

7 THE CLERK: Do both sides stipulate all sworn
8 jurors are present?

9 MR. PERRI: Yes, your Honor.

10 MR. BERGER: Yes.

11 THE COURT: Welcome back, everyone. I hope
12 you enjoyed your extended break today.

13 MR. PERRI: People call Detective Maurice
14 Baran.

15 THE CLERK: Detective, please state your full
16 name, spell last name, shield and command.

17 THE WITNESS: Maurice Baran, B-A-R-A-N,
18 Shield 571, Special Victims Squad. Nassau County
19 police.

20 THE COURT: You may inquire.

21 DIRECT EXAMINATION

22 BY MR. PERRI:

23 Q. Detective Baran, you stated that you were a
24 detective with the Nassau County Special Victims Squad. How
25 long have you been a detective?

Det. Baran - People - Direct

936

1 A. I'm coming on twenty years at the end of the
2 month.

3 Q. How long have you been a member of the special
4 victims squad?

5 A. A total of seven years.

6 Q. How long have you been a member of law
7 enforcement?

8 A. I'm coming on thirty years at the end of the
9 month.

10 Q. What are your responsibilities with the special
11 victims squad?

12 A. We investigate sex crimes against both adults and
13 children, and serious physical injury against children.

14 Q. On October 16, 2013, were you working on that day?

15 A. Yes.

16 Q. Were you working a day tour or night tour?

17 A. I was working from four p.m. to one a.m. in the
18 morning.

19 Q. Did there come a time where you became involved in
20 an investigation concerning the subject Daniel Ramirez and
21 an alleged victim, Mya Feliciano Ramirez?

22 A. Yes, I did.

23 Q. How did you become involved in that investigation?

24 A. I was notified by one of my partners, Detective
25 Pacheco, P-A-C-H-E-C-O, that a Sergeant Sacks, S, as in

Det. Baran - People - Direct

937

1 sugar, A-C-K-S. From the First Precinct called to say that
2 uniformed officers were there.

3 MR. BERGER: Objection.

4 THE COURT: Sustained.

5 Q. Without going into sum and substance of those
6 conversations, did there come a time you responded to the
7 scene in Roosevelt that afternoon?

8 A. No.

9 Q. What did you do next in response to the calls you
10 got reporting the alleged incident?

11 A. I called Sergeant Sacks back and asked him to --

12 MR. BERGER: Objection.

13 THE COURT: Sustained.

14 Q. Did there come a time where you encountered an
15 individual named Daniel Ramos?

16 A. Yes, I did.

17 Q. Where did you encounter Daniel Ramirez?

18 A. I first saw him when he was brought into special
19 victims squad in Bethpage under arrest by a uniformed
20 officer.

21 Q. What officers were with you?

22 A. Wiggan and Boccio.

23 Q. And do you see the individual that you learned to
24 be Daniel Ramos in the courtroom today?

25 A. Yes, I do.

Det. Baran - People - Direct

938

1 Q. Could you please identify him by pointing at him
2 and citing the color of the article of clothing he is
3 wearing?

4 A. Wearing a white pullover sweatshirt.

5 MR. PERRI: May the record reflect all the
6 witness identified the defendant.

7 THE COURT: It will so indicate.

8 Q. Did there come a time after you saw the defendant
9 at the special victims squad that you reported to the Nassau
10 Community Medical Center?

11 A. Yes.

12 Q. When you were at the Nassau Community Medical
13 Center, did there come a time when you met an individual
14 named Mya Ramirez?

15 A. Yes.

16 Q. And did there come a time when you learned who the
17 mother of Mya Ramirez was?

18 A. Yes.

19 Q. Who was that?

20 A. Crystal Ramirez.

21 Q. Could you describe Mya Ramirez, how she appeared
22 to you?

23 A. She was a short six-year old, she smiled when I
24 walked in the room, and she was thin with straight hair.

25 Q. Detective, did there come a time that you spoke

Det. Baran - People - Direct

939

1 with Crystal Ramirez about what happened to Mya?

2 A. Yes, I did.

3 Q. Without going into the sum and substance, anything
4 she said to you, was Mya with her when you spoke to Crystal?

5 A. No, she was not.

6 Q. Did there come a time you spoke with Mya?

7 A. Yes, I did.

8 Q. Where in Nassau County Medical Center was Mya when
9 you spoke to her?

10 A. In a treatment room in the pediatric ER.

11 Q. Why was she there?

12 MR. BERGER: Objection.

13 THE COURT: Overruled.

14 A. She had been brought to the hospital for an
15 examination by a SANE nurse.

16 Q. Did there come a time when you spoke with Mya
17 Ramirez about what happened to her?

18 A. Yes.

19 Q. What, if anything, did you say to her?

20 MR. BERGER: Objection.

21 THE COURT: Overruled.

22 A. I asked her what happened today.

23 Q. What, if anything, did she say in response?

24 A. She said he ate my coochie.

25 Q. What, if anything, did you say in response to what

Det. Baran - People - Direct

940

1 she said?

2 A. I said, who?

3 Q. What, if anything, did she say?

4 A. She said, Danny or Daniel. I think it was Danny
5 though.

6 Q. After she said Danny, what, if anything, did you
7 say next?

8 A. I asked her if he had done this before.

9 Q. What, if anything --

10 MR. BERGER: Objection.

11 THE COURT: Overruled.

12 Q. What, if anything, did Mya say in response to your
13 question had he ever done this before?

14 A. She didn't say anything, but she nodded her head
15 up and down.

16 Q. Did you meet an individual that day by the name
17 Cathy McAllister?

18 A. Yes, I did.

19 Q. Who is Cathy McAllister?

20 A. A sexual assault nurse examiner who works at the
21 medical center.

22 Q. Did you see Nurse McAllister during your initial
23 trip to the medical center?

24 A. Yes, I did.

25 Q. And did there come a time later that same day

Det. Baran - People - Direct

941

1 where you recovered physical evidence from the medical
2 center from Nurse McAllister?

3 A. Yes.

4 Q. And what evidence did you collect from Nurse
5 McAllister?

6 A. I collected a sexual offense evidence collection
7 kit, which is otherwise known as a rape kit, and I collected
8 a pair of pajama bottoms that Mya had been wearing that
9 McAllister had put into a paper bag and held for me.

10 Q. I ask the witness be shown what is in evidence as
11 People's 1.

12 THE COURT: You may.

13 Q. Do you recognize what is already in evidence as
14 People's 1?

15 A. Can I take it out?

16 Q. Yes.

17 A. Yes, I do.

18 Q. What do you recognize it to be?

19 A. The pajama bottoms that were given to me by Cathy
20 McAllister at the medical center.

21 Q. What, if any, markings do you recognize on the
22 paper bag?

23 A. The paper bag has a patient tag in the name of Mya
24 Feliciano Ramirez, and it has a piece of evidence tape that
25 I put over the bag and initialed prior to submitting the bag

Det. Baran - People - Direct

942

1 with the pajamas to the evidence management unit in the
2 police department.

3 MR. PERRI: I ask People's 1 be taken from
4 the witness.

5 I ask if People's 4 be shown to the witness.

6 THE COURT: It may.

7 (Whereupon, People's Exhibit 4 was handed to
8 the witness.)

9 Q. Detective, do you recognize People's 4 already in
10 evidence?

11 A. Yes, I do.

12 Q. What do you recognize it to be?

13 A. It is the sexual offense evidence collection kit
14 that was given to me by Cathleen McAllister at the medical
15 center after she had examined Mya.

16 Q. Could you describe, is that sexual offense
17 collection kit, is it in the same state as when you first
18 received it from Nurse McAllister?

19 A. It has -- no, it's not.

20 Q. Could you describe how it appears differently now?

21 A. It has numerous other stickers and labels on it
22 and some writing on it that was not present when it was
23 first given to me.

24 Q. Drawing your attention to the orange seal label on
25 the top of the box, was that still intact when you received

Det. Baran - People - Direct

943

1 that box?

2 A. Yes.

3 MR. PERRI: I ask People's 4 be taken from
4 the witness.

5 Q. Detective, what did you do with these items
6 eventually when you returned them to the special victims
7 squad?

8 A. I completed some paperwork to have them submit it
9 to the evidence management unit of the police department.

10 Q. Is there a number assigned to this case?

11 A. Yes, there is. A case number, you mean?

12 Q. Yes.

13 A. Yes.

14 Q. What is the case number?

15 A. 2013CR 338372.

16 Q. And were these items submitted under that case
17 number?

18 A. Yes, they were.

19 Q. After speaking to Mya Ramirez and Crystal Ramirez,
20 did there come a time you left the medical center?

21 A. Yes.

22 Q. After collecting the evidence and speaking to Mya
23 and Crystal, where did you go?

24 A. I returned to the special victims squad in
25 Bethpage.

Det. Baran - People - Direct

944

1 Q. You already testified before you had gone to the
2 medical center originally, you had already seen the
3 defendant, Daniel Ramirez. When you first saw Daniel
4 Ramirez at the special victims squad, where was he?

5 A. He was being led into the office and then into an
6 arrest room which is part of the larger office.

7 Q. Was he in custody at that time?

8 A. Yes, he was.

9 Q. Was the defendant handcuffed?

10 A. Yes, he was.

11 Q. And where was he being held when he was retained
12 at the special victims squad?

13 A. We have an arrest room that is devoted to people
14 who are under arrest and that's where he was.

15 Q. Could you describe the arrest room?

16 A. It's a room about eight by eight. It has a desk
17 in it with a desktop computer on top, a chair next to the
18 desk, which is used to seat the defendant. Next to that
19 chair is a handcuff ring which comes out from the desk, and
20 a handcuff is usually hanging from that ring. There's
21 another chair in the middle of the desk. There's a monitor,
22 a mouse, keyboard, sometimes a telephone. There's a window,
23 a large window that takes up most of the wall from the
24 hallway and next to that window is a door.

25 Q. When you returned to the special victims squad

Det. Baran - People - Direct

945

1 that night after the hospital, was the defendant still
2 there?

3 A. Yes, he was.

4 Q. Where was he when you returned?

5 A. He was sitting in the chair next to the desk. He
6 had one hand cuffed into the handcuff ring, coming from the
7 desk.

8 Q. Were Officers Wigand and Boccio still at the
9 special victims squad?

10 A. Yes, they were.

11 Q. 2013, at the time and on the day that this
12 defendant was present in the special victims squad, was any
13 arrest room equipped with a video or audio recording
14 equipment?

15 A. No, it was not.

16 Q. Are the arrest rooms currently equipped with that?

17 A. Yes, they are.

18 Q. When did that happen?

19 A. We moved into new offices in November or December
20 of 2014.

21 Q. Did there come a time when you had a conversation
22 with the defendant on the night of October 16th?

23 A. Yes, I did.

24 Q. 2013?

25 A. Yes, I did.

Det. Baran - People - Direct

946

1 Q. Approximately when you started to speak with the
2 defendant, was he handcuffed while he spoke with you?

3 A. He was initially handcuffed when I walked behind
4 and I removed the handcuff from him.

5 Q. When you initially spoke with the defendant, were
6 you alone in the room?

7 A. Initially, I was.

8 Q. Did you remain alone with the defendant in the
9 room?

10 A. No, I did not.

11 Q. Were you armed?

12 A. No, I was not.

13 Q. Who joined you in that room during the interview?

14 A. My partner, Detective Reinaldo Pacheco,
15 P-A-C-H-E-C-O.

16 Q. Was Detective Pacheco armed?

17 A. Not that I could see.

18 Q. Did Detective Pacheco remain for the entire
19 interview?

20 A. No, he did not.

21 Q. Now, when you -- what, if anything, did you say to
22 the defendant or do when you first prepared to speak with
23 him concerning the incident?

24 A. When I first walked in I asked him if he needed
25 anything to eat or drink, use the bathroom, any medical

Det. Baran - People - Direct

947

1 situations I needed to be aware of. And then I said, I
2 would -- I don't remember if he took a glass of water or
3 not, but after that was taken care of, I told him I was
4 going to want to talk to him about what happened, and then I
5 needed to read his rights to him first.

6 Q. Before going into reading the defendant his
7 rights, the questions about food and drink, bathroom,
8 medical needs, what language were you speaking to the
9 district attorney?

10 A. English.

11 Q. What language was the defendant speaking in
12 response to questions?

13 A. English.

14 Q. Did you have any problems communicating with the
15 defendant about the topics?

16 A. No, I did not.

17 Q. Did the answer to the questions make sense?

18 A. Yes.

19 Q. What, if any, accent did you note the defendant
20 had?

21 A. I thought he had a Spanish accent.

22 Q. So, detective, you referenced this, did there come
23 a time when the defendant was advised of his constitutional
24 rights?

25 A. Yes, he was.

Det. Baran - People - Direct

948

1 Q. At what time was the defendant so advised of his
2 rights?

3 A. I think it was 11:40 that evening.

4 Q. Could you please explain to the jury the process
5 of how you had the defendant advised of his constitutional
6 rights?

7 A. In this particular case, I was going to read his
8 rights from the card that has English on one side, Spanish
9 on the other, and before I began to read I asked him, would
10 he rather the rights be read in Spanish.

11 Q. Why did you offer the defendant an option of the
12 rights read to him in Spanish?

13 A. As a courtesy, and the rights card is a card with
14 technical language, and I wasn't sure at that point if he
15 would prefer to have English or Spanish, so I offered it in
16 Spanish and he accepted.

17 Q. So how did you go about ~~having the defendant read~~
18 his rights in Spanish?

19 A. I called out to Detective Pacheco and asked him to
20 or called out. He was nearby and asked him if he would read
21 the rights card for me in Spanish.

22 Q. You said Pacheco is a member of the special
23 victims squad?

24 A. Yes, he is.

25 Q. And what, if anything, did Detective Pacheco use

Det. Baran - People - Direct

949

1 to read the defendant his rights?

2 A. He held up a rights card in front of him, his face
3 and read from it.

4 MR. PERRI: I ask the witness be shown what
5 was marked as People's Exhibit number 9 for
6 identification.

7 THE COURT: Show it to him.

8 MR. PERRI: There was an item premarked as
9 eight.

10 THE COURT: Let's show People's 9.

11 (Whereupon, People's Exhibit 9 was handed to
12 the witness.)

13 Q. With respect to People's 9 to be marked for
14 identification; do you recognize People's 9?

15 A. Yes, I do.

16 Q. What do you recognize it to be?

17 A. The rights card Detective Pacheco read from when
18 he was giving the defendant his Miranda rights.

19 Q. And what markings do you recognize on that card
20 that support your conclusion it's the same rights card that
21 was read to the defendant on that night?

22 A. First and foremost, it has my signature and shield
23 number, Detective Pacheco and shield number, and the time he
24 dated it. The defendant wrote CSI on two places and signed
25 his name and signed his name on a third spot.

Det. Baran - People - Direct

950

1 Q. Who retained custody of that document after those
2 markings were placed on that document?

3 A. I did.

4 Q. Has there been any substantial change or is it in
5 substantially the same condition as on the day it was
6 signed?

7 A. It's in the same condition.

8 MR. PERRI: I ask People's 9 be moved into
9 evidence.

10 THE COURT: Mr. Berger, would you like to see
11 it first?

12 MR. BERGER: No objection.

13 THE COURT: Let's marked into evidence as
14 People's 9.

15 (People's Exhibit 9, previously marked for
16 identification, was marked and received in evidence.)

17 THE COURT OFFICER: Marked in evidence nine.

18 (Whereupon, People's Exhibit 8 was handed to
19 the witness.)

20 Q. Could you please explain what, if anything, the
21 defendant said or did during the process of Detective
22 Pacheco advising him of his rights?

23 A. There came a point in time where he said to
24 Detective Pacheco and Detective Pacheco handed the defendant
25 the card. The defendant wrote the word si and then signed

Det. Baran - People - Direct

951

1 his name next to it. Detective Pacheco continued reading
2 from the card and a short time later the defendant said si
3 again, signed his name next to the word si. Detective
4 Pacheco continued reading from the card, and there came a
5 point where the defendant signed his name at the bottom of
6 the card after the writing or underneath the last line of
7 the writing.

8 Q. After the defendant made that final signature on
9 the card, what, if anything, did you do?

10 A. I wrote my name on one margin after Detective
11 Pacheco had written his name on the other margin.

12 Q. Did you continue to speak to the defendant after
13 he signed and after signing the arrest card as a witness?

14 A. Yes, I did.

15 Q. What language were you speaking to him?

16 A. English.

17 Q. Did you offer to let him speak in Spanish?

18 A. Yes, I did.

19 Q. And what, if anything, was the defendant's
20 response to your offer?

21 A. He said, he would try in English.

22 Q. Were you prepared to have the defendant give a
23 statement in Spanish, if necessary?

24 A. Yes.

25 Q. Did you have any difficulty speaking with the

Det. Baran - People - Direct

952

1 defendant in English?

2 A. No.

3 Q. Was he able to discuss the incident with you?

4 A. Yes.

5 Q. Were you able to understand him clearly?

6 A. Yes.

7 Q. What was the initial question that you asked him
8 to start your discussion of the incident?

9 A. I asked him to tell me what happened today with
10 Mya.

11 Q. What was his response?

12 A. He began telling me how he went to the house
13 earlier and hung out with Mya's mom and went into the house
14 to help with homework, and there came a point in time later
15 when he went to the bathroom, Mya who he called a little
16 girl, was following him all around the apartment and that he
17 came out of the bathroom and played a tickle game with her.
18 I asked him something about what did he mean by the tickle
19 game, and he said he tickled her pussy.

20 Q. What, if anything, else did you say after that?
21 I'm sorry, what did you do next after the defendant made
22 that statement?

23 A. I asked him if he would like to have me type up
24 that statement for him, and we could include it in any
25 paperwork going to court, and he said that would be fine. I

kmm

Det. Baran - People - Direct

953

1 opened up the Microsoft Word program and started him again
2 from the beginning of the day and as he spoke, I typed.

3 Q. Did there come a time -- was Detective Pacheco
4 present for the taking of the formal statement?

5 A. No, he was not.

6 Q. What, if any, instructions did you give the
7 defendant --

8 MR. PERRI: Withdrawn.

9 Q. Could you please explain the process by which you
10 typed up the statement, how it became to be typed up?

11 A. I asked questions of the defendant regarding where
12 he lives, his Social Security number. He gave those and
13 then I said, tell me again from the beginning what happened
14 and he began to tell me he finished work, went to the house.
15 I was typing as close as I could in his words what the story
16 was.

17 Q. Did you type straight through the entire time you
18 were with the defendant?

19 A. No. There came some point in time I needed him to
20 clarify something I was unclear about or explain something
21 to me that I didn't understand.

22 Q. Approximately, what time did you start typing the
23 statement?

24 A. At about 11:45 that night.

25 Q. Approximately, how long did it take you to finish

Det. Baran - People - Direct

954

1 THE full draft of the defendant's statement?

2 A. The estimate, it took about 45 minutes to finish
3 it.

4 Q. Were you talking to the defendant as you typed?

5 A. Yes.

6 Q. After the defendant finished telling you his
7 version of the incident, what did you do next?

8 A. I printed the statement. I retrieved it from the
9 printer. I handed it to the defendant. He had told me
10 already he could read English. I gave him a statement.
11 Then I asked him to read the first paragraph out loud to me
12 so I could be sure he could read English.

13 MR. PERRI: I ask the witness be shown
14 People's 10 for ID.

15 THE COURT: You may.

16 (Whereupon, People's Exhibit 10 was handed to
17 the witness.)

18 Q. Do you recognize what is marked as People's 10?

19 A. Yes, I do.

20 Q. What do you recognize it to be?

21 A. The statement that I had prepared on Microsoft
22 Word while speaking to the defendant in the special victims
23 squad.

24 Q. Is that the original statement?

25 A. Yes, it is.

Det. Baran - People - Direct

955

1 Q. And has it been altered in any way?

2 A. No, it has not.

3 Q. What, if anything, do you recognize about that
4 document that shows it's the original statement?

5 A. It has my signature on the bottom of the first
6 page and the bottom of the second page. It has Detective
7 Pacheco underneath mine on those two places, and the
8 defendant's signature on the bottom of the first page and a
9 signature and address on the bottom of the second page.

10 Q. Since that document was signed, who retained
11 custody of that document?

12 A. I did.

13 Q. Was it in the same or substantially the same
14 condition as when it was signed?

15 A. Yes.

16 MR. PERRI: I ask People's 10 be marked in
17 evidence.

18 THE COURT: Let's show it to Mr. Berger,
19 please.

20 MR. BERGER: Without waiving any other
21 objection previously. I have no objection here now.

22 THE COURT: Thank you. Let's have it marked
23 into evidence as People's 10.

24 (People's Exhibit 10, previously marked for
25 identification, was marked and received in evidence.)

Det. Baran - People - Direct

956

1 MR. PERRI: I ask it be returned to the
2 witness.

3 (Whereupon, People's Exhibit 10 was handed to
4 the witness.)

5 Q. Detective, you stated that you testified that the
6 defendant read the first paragraph out loud. Did he read
7 that paragraph accurately?

8 A. Yes, he did.

9 Q. And was the defendant given an opportunity to read
10 the entire document before signing it?

11 A. Yes, after he finished the first paragraph, I
12 interrupted him and said you can read the rest out loud or
13 to yourself, whichever you prefer.

14 Q. What, in fact, did the defendant do?

15 A. He read it to himself, or he read it out loud in
16 an undertone or to himself with a little bit of sounding of
17 out loud reading.

18 Q. Was the defendant looking at the document the
19 entire time?

20 A. Yes.

21 Q. Was the defendant given an opportunity to make
22 changes to the document?

23 A. Yes, he was.

24 Q. Can you explain that process?

25 A. When he first read -- when he read the first

Det. Baran - People - Direct

957

1 paragraph, he noticed that I had typed the Social Security
2 number incorrectly. The original document repeated the
3 sequence of numbers, it repeated 5/8 twice. He noticed
4 that. He said that's not the right number. So I gave him a
5 pen and asked him to line out the incorrect number and to
6 write the correct number underneath it, and to initial the
7 correction, which he did.

8 Q. And that interaction, that conversation with the
9 defendant, was that in Spanish or English?

10 A. English.

11 Q. Could you explain how three quarters of the way
12 down the page the handwritten word girl appears; can you
13 explain how that appeared?

14 A. While he was reading, he stopped and looked up and
15 pointed out to me that I had omitted the word girl from one
16 sentence. So the document read, the little was following
17 me. He said it should be little girl. So I either gave him
18 back the pen or he had the pen and I asked him to the make
19 the correction and to initial it.

20 Q. Did he do that?

21 A. Yes, he did.

22 Q. Did there come a time anyone else read the
23 document to the defendant before he signed it?

24 A. Yes.

25 Q. Who was that?

Det. Baran - People - Direct

958

1 A. Detective Pacheco.

2 Q. In what language did Detective Pacheco read the
3 document to the defendant?

4 A. In Spanish.

5 Q. How did it come to happen Detective Pacheco came
6 in and read the statement in Spanish to the defendant?

7 A. When the defendant finished reading the document,
8 then he looked up and said, okay. I asked him, would you
9 also like Detective Pacheco to read it to you in Spanish?
10 And he said, yes, he would, or okay, or indicated he would
11 like that.

12 Q. Did Detective Pacheco in fact return?

13 A. Yes, he did.

14 Q. To your knowledge, did Detective Pacheco read that
15 document to the defendant in Spanish in your presence?

16 MR. BERGER: Objection, your Honor, to his
17 knowledge?

18 THE COURT: Overruled. You may answer.

19 A. Yes, he did.

20 Q. Was Detective Pacheco looking at this document,
21 People's 10, while he was speaking what you believed to be
22 in Spanish to the defendant?

23 A. Yes.

24 Q. Did it appear the defendant was paying attention?

25 A. Yes.

Det. Baran - People - Direct

959

1 Q. If you had to estimate, how long did it take
2 Detective Pacheco to read that document?

3 A. I'd say about ten to fourteen minutes, ten to
4 thirteen minutes.

5 Q. Did the defendant give you any indication after
6 you typed the statement in English, he did not understand
7 the English language version?

8 A. No, he did not.

9 Q. Did he have any trouble communicating with you in
10 English during the time you were taking the statement now?

11 A. No, he did not.

12 Q. Why did you have Detective Pacheco translate the
13 statement?

14 MR. BERGER: Objection.

15 Q. For the defendant?

16 THE COURT: Overruled.

17 A. I wanted to defend against him saying later that
18 he didn't understand English, and didn't understand what he
19 was signing.

20 Q. Drawing your attention to the markings, the
21 letters DR on the first page of People's 10, could you
22 explain to the jury who made those markings?

23 A. The DR were made by the defendant when I asked him
24 to make the correction on the document and then sign his
25 initials.

Det. Baran - People - Direct

960

1 Q. Drawing your attention to the RP on the first page
2 of the document, could you explain to the jury who made
3 those markings?

4 A. Detective Pacheco did.

5 Q. Why were those markings made by Detective Pacheco?

6 A. As he was reading the document to the defendant in
7 Spanish, he would stop at the point of a correction and
8 initial his initials RP, Reinaldo Pacheco, to indicate he
9 read the correction.

10 Q. Did there come a time when the defendant signed
11 the statement?

12 A. Yes.

13 Q. Was that after Detective Pacheco read it to him in
14 Spanish?

15 A. Yes.

16 Q. Who was present when the defendant signed the
17 statement?

18 A. Myself, Detective Pacheco, and the defendant was
19 present.

20 Q. What, if any, markings did you make when the
21 defendant signed the statement?

22 A. I signed my name on the first page and on the
23 second page.

24 Q. What, if any, markings did Detective Pacheco make
25 when the defendant signed the statement?

Det. Baran - People - Direct

961

1 A. He also signed the first and second page.

2 Q. Do you recognize your signature on that page?

3 A. Yes.

4 Q. Do you recognize Detective Pacheco's signature on
5 those pages?

6 A. Yes.

7 Q. Do you recognize the defendant's signature?

8 A. Yes.

9 Q. Detective, I ask you now to please read the
10 statement into the record for the jury.

11 THE COURT: Please read it slowly.

12 A. Case number 1013CR338372. Other number SVS.
13 5042013. 2344 10/16/2013. Statement of Daniel Ramos. My
14 name is Daniel Ramos. I live at 781 Coleridge Road,
15 C-O-L-E-R-I-D-G-E, Road in Uniondale. My wife, J-U-A-M-A,
16 lives there with me with my son Carlo, age 31, and my other
17 son, David Ramos, who is twenty-three. I worked for NICE,
18 N-I-C-E, in Nassau County as a bus driver. My Social
19 Security number is 058-78-3420. I have been told by the
20 detective that I have the right to remain silent and that
21 any statements I make may be used against me in court. I
22 have been told that I have the right to talk with a lawyer
23 before answering any questions or to have a lawyer present
24 at any time.

25 Further, I have been advised that if I cannot

Det. Baran - People - Direct

962

1 afford to hire a lawyer, one will be provided to me, and I
2 have the right to keep silent until I have had the chance to
3 talk to a lawyer. I understand my rights and make the
4 following statement freely and voluntarily. I'm willing to
5 give this statement without talking with a lawyer or having
6 one present.

7 Today, Wednesday, October 16, 2013, I am normally
8 off from work, but have put my name on the list for extra
9 work, and I got five hours today. I work from about 6:30
10 a.m. until about 11:30 a.m. when I was finishing work
11 today, I got a call from my friend, Crystal Ramirez. I know
12 her husband Scoobie. That's spelled S-C-O-O-B-I-E. Crystal
13 told me to come to her house today after work and hang out
14 and have a few drinks with her. I forgot what street she
15 lives on, but she lives in the back of the deli. I bought a
16 twenty dollar bottle of Long Island ice tea because she
17 asked me to bring some liquor so we could drink. I also
18 bought her a her a pack of Newport one hundreds. Crystal
19 drinks every day and smokes a lot too. I encourage her to
20 keep the door closed so the smoke doesn't go into the house
21 and hurt the kids.

22 I got to her house and we went onto the porch and
23 started drinking and she started smoking. After a short
24 time, a black guy came by and joined us on the porch. He
25 was there a little bit and then he left. I stayed with

kmm

Det. Baran - People - Direct

963

1 Crystal drinking after he left. I was still there when the
2 kids came home and they went inside the house to make their
3 homework. I helped them today to do their homework. I told
4 Crystal to help them, and she told me to help them. So I
5 went inside the house and helped them. When they finished
6 their homework, I went back outside to drink with Crystal.

7 After a while, I told Crystal I needed to use the
8 bathroom and she said go ahead and use the bathroom. So I
9 went inside the house and the little girl was following me
10 all around. So I went to the bathroom. I told her to stay
11 out of the bathroom and I went in. When I came out of the
12 bathroom, she was still there waiting for me in the kitchen.
13 I told her I was going to tickle her and I pulled down her
14 pants and underwear and tickled her pussy with my mouth. I
15 then told her to pull her pants up and just then Crystal
16 came into the kitchen and saw the little girl with her pants
17 down and said to me, quote, what are you doing? Unquote. I
18 said, I wasn't doing nothing. She then asked the little
19 girl what was I doing. And she said, I was licking her
20 pussy. I said to Mya, that I was quote, playing with you,
21 unquote. But she said no, he was licking my pussy. The
22 little girl was scared of her mother. Crystal then told me
23 to get out and I did.

24 I made a big mistake and I'm very sorry for what I
25 did. I'm presently in the special victims squad, the

kmm

Det. Baran - People - Direct

964

1 detective's office where I am giving this statement to
2 Detective Baran who has typed it for me and Detective
3 Pacheco has read it to me in Spanish and it's correct and
4 true.

5 Q. Detective, the term pussy appears in this document
6 a few places, two places. Why is that term in the document?

7 A. That was his word.

8 Q. Now, did you or any other member of law
9 enforcement make the defendant any promises before he gave
10 that statement or signed that statement? Did you offer him
11 a deal?

12 A. No.

13 Q. Did you, or to your knowledge, any other members
14 of law enforcement threaten the defendant in any way in
15 order to get him to sign the statement?

16 A. No.

17 Q. Detective, what, if anything, else happened
18 between you and the defendant after he signed the statement?

19 A. I asked him if he would like to write a letter to
20 Crystal and Mya apologizing for what happened.

21 Q. And when you made that request of the defendant,
22 was that in Spanish or English?

23 A. English.

24 Q. What, if anything, happened after you made that,
25 after you asked that question?

Det. Baran - People - Direct

965

1 A. He indicated he would. I gave him a pad of paper
2 and a pen.

3 MR. PERRI: I ask the witness be shown
4 People's 11 for identification.

5 (Whereupon, People's Exhibit 11 was handed to
6 the witness.)

7 Q. Detective, do you recognize what is marked as
8 People's 11?

9 A. Yes, I do.

10 Q. What do you recognize People's 11 to be?

11 A. It's the page from the pad that the defendant
12 wrote on after he indicated he would like to write a letter
13 apologizing.

14 Q. Did you observe the defendant actually write on
15 that piece of paper?

16 A. Yes, I did.

17 Q. What happened after the defendant finished writing
18 on it?

19 A. I took it, and I put it into my folder.

20 Q. Is that in the same or substantially the same
21 condition as it was when the defendant finished writing it?

22 A. It is, with the exception I stapled it with red
23 ink, confidential sex crime victim.

24 Q. Other than that, have there been any other
25 alterations to that document?

Det. Baran - People - Direct

966

1 A. No.

2 MR. PERRI: I ask People's 11 be moved into
3 evidence.

4 THE COURT: Show it to Mr. Berger, please.

5 MR. BERGER: No objection.

6 THE COURT: Let's have it marked into
7 evidence as People's 11.

8 (People's Exhibit 11, previously marked for
9 identification, was marked and received in evidence.)

10 Q. Did you or any other members of law enforcement,
11 to your knowledge, make the defendant any promises in order
12 to get him to write that letter?

13 A. No.

14 Q. Did you, detective, or any other members of law
15 enforcement, threaten the defendant in any way to get him to
16 write that letter?

17 A. No.

18 Q. What did you do with that letter after the
19 defendant finished writing it?

20 A. I photocopied it to include in the arrest
21 paperwork, but then I put the original back in my folder.

22 Q. Did there come a time where you shared that letter
23 with Detective Pacheco?

24 A. Yes.

25 Q. Detective, after the defendant wrote the letter,

Det. Baran - People - Direct

967

1 and you took custody of the letter, what happened next that
2 night with respect to the defendant?

3 A. I left the room. I began to do some arrest
4 processing on the computer, and then I went back into the
5 arrest room and asked the defendant if he would provide a
6 DNA sample.

7 Q. And after when you asked the defendant to provide
8 a DNA sample, what was his response?

9 A. He indicated he would.

10 Q. And did you ask the defendant that question in
11 English?

12 A. Yes.

13 Q. Did he respond in English?

14 A. Yes.

15 Q. Did you in fact collect a DNA sample?

16 A. Yes, I did.

17 Q. During the processing, collecting a DNA sample,
18 did you have to give him instructions or a direction?

19 A. Yes.

20 Q. He was able to follow your instructions and
21 directions?

22 A. Yes.

23 Q. After the defendant said, yes, he would submit to
24 the collection of a DNA sample, what, if anything, did you
25 do?

Det. Baran - People - Direct

968

1 A. I left the room and retrieved a buccal swab kit.
2 I sealed the buccal from our supply shelf.

3 MR. PERRI: I ask the witness be shown what
4 was marked as People's 7 in evidence.

5 THE COURT: It could be shown to him.

6 Q. I ask you to take a look at People's 7 in
7 evidence; do you recognize People's 7?

8 A. Yes, I do.

9 Q. What do you recognize it to be?

10 A. It's the buccal swab kit that I used to collect
11 DNA from the defendant on the 17th of October.

12 Q. What markings do you recognize on that envelope
13 and it's contents that shows it is the same buccal swab you
14 used on October 17, 2013?

15 A. The out envelope SCS504103, and my writing. I put
16 evidence tape on two flaps and signed my name on the
17 evidence tape on both flaps.

18 Q. Could you please open the inner envelope.

19 What, if any, more markings on the inner envelope
20 do you recognize from October 17, 2013?

21 A. The inner envelope has my name, the case number,
22 and the subject's name on the first line of the chain of
23 evidence. And it has a piece of evidence tape on the back
24 on the flap that I initialed.

25 Q. Were those envelopes, were they opened or sealed

Det. Baran - People - Direct

969

1 after you collected the DNA sample?

2 A. They were sealed.

3 Q. Did you seal the envelope after you collected the
4 DNA evidence?

5 A. Yes, I did.

6 Q. Was the envelope sealed when it was later
7 submitted to the property?

8 A. To the evidence management unit it was.

9 Q. And, detective, could you explain the process of
10 taking -- how you took the buccal swab sample from the
11 defendant?

12 A. Inside there are two Q'tip-like cotton swabs on a
13 long wooden stick. I asked the defendant to open his mouth.
14 I rubbed one of those cotton swabs inside of one cheek and
15 the other cotton swab on the inside of his other cheek. I
16 let them dry, and I put them back into an envelope and put
17 the envelope into a plastic bag, put the plastic bag in the
18 inner envelope, I put the inner envelope into the outer
19 envelope, and I submitted it to the evidence management.

20 Q. And did you use a fresh buccal swab kit?

21 A. Yes, I did.

22 Q. Was the buccal swab kit also submitted in the same
23 case number that you already testified about?

24 A. Yes, it was.

25 Q. After you took the buccal swab from the defendant,

Det. Baran - People - Direct

970

1 what happened next?

2 A. I continued processing the arrest and later on
3 that morning brought over the sexual offense evidence
4 collection kit, the pajamas and buccal swab and left --
5 deposited them in a locker in headquarters to be picked up
6 by the evidence management unit.

7 Q. When you deposited those items in the locker, were
8 they opened or sealed?

9 A. They were sealed.

10 MR. PERRI: Thank you. Nothing further, your
11 Honor.

12 THE COURT: All right. I think what we'll
13 do, we will start cross-examination because it's not
14 quite the hour, but close enough. We'll take our short
15 break now and let everyone stretch their legs and then
16 we'll come back and finish the day with
17 cross-examination. See you all in five minutes.

18 (Whereupon, the jury exited the courtroom.)

19 THE COURT: Anything for the record?

20 MR. PERRI: No, your Honor.

21 THE COURT: Anything for the record, defense?

22 MR. BERGER: No, your Honor.

23 (Whereupon, a short recess was taken.)

24 (Whereupon, the jury entered the courtroom.)

25 THE CLERK: Do both sides stipulate all sworn

Det. Baran - People - Cross

971

1 jurors are present and properly seated; People?

2 MR. PERRI: Yes, your Honor.

3 THE CLERK: Defense counsel?

4 MR. BERGER: Yes, your Honor.

5 THE COURT: Detective, you are reminded you
6 are still under oath.

7 You may inquire.

8 CROSS-EXAMINATION

9 BY MR. BERGER:

10 Q. Did you make any notes or memorandum when you
11 spoke to Crystal Ramirez and Mya at the hospital?

12 A. No, I did not.

13 Q. So what you are testifying to is based upon your
14 own independent recollection of your meeting them at the
15 hospital?

16 A. Yes, it is.

17 Q. Did you talk to Mr. Perri prior to you testifying
18 here at this trial in the last few days?

19 A. Yes, I did.

20 Q. Where did that happen?

21 A. In his office.

22 Q. Who else was present?

23 A. Nobody.

24 Q. Did you talk to Mr. Perri about --

25 MR. BERGER: Withdrawn.

Det. Baran - People - Cross

972

1 Q. You are the carrying detective here, correct?

2 A. That's correct.

3 Q. That means you are in charge of this case, right?

4 A. Yes.

5 Q. So, did you talk to Mr. Perri about what has gone
6 on in the course of this trial with respect to the witnesses
7 that were called?

8 A. Yes.

9 Q. Did you talk to him about Mya and her testimony
10 here?

11 A. Not her testimony.

12 Q. What about Mya did you talk about?

13 A. He told me that she was crying on the stand.

14 Q. That's it?

15 A. Yes.

16 Q. And you didn't make an inquiry about it?

17 A. No.

18 Q. Did you talk to Detective Pacheco before
19 testifying here at this trial?

20 A. You mean about the trial?

21 Q. Yes, about this case. Yes.

22 A. We had talked.

23 Q. When?

24 A. Back when we had the hearings several months ago.

25 Q. Well, do you remember how long ago that was?

kmm

Det. Baran - People - Cross

973

1 A. I forget. I thought it was a couple of months
2 ago.

3 Q. By a couple, do you mean two or three?

4 A. Two or three.

5 Q. And would you dispute, disagree with the fact the
6 hearings occurred in September of 2014?

7 A. It seems two or three months ago, but I don't have
8 a strong feeling either way.

9 Q. But your best recollection was two or three months
10 ago, but you wouldn't dispute now that I tell you it was
11 back in September of 2014, would you?

12 A. I wouldn't dispute it.

13 Q. Did you talk to Detective Pacheco after the
14 hearing before, but before the trial?

15 A. No, not about any details or particulars.

16 Q. I didn't ask about details. Did you talk to him
17 about this case at any time after the hearing but before
18 your testimony here today?

19 A. No.

20 Q. But you did talk to Detective Pacheco about this
21 case prior to the hearing, correct?

22 A. That's correct.

23 Q. And you spoke to Mr. Perri about your involvement
24 in this case in Mr. Perri's office, correct?

25 A. That's correct.

Det. Baran - People - Cross

974

1 Q. Prior to the hearing?

2 A. Yes, that's correct too.

3 Q. And Detective Pacheco was there, was he not?

4 A. I don't recall if he was in the office or not,
5 when I spoke to Mr. Perri.

6 Q. Let me ask you: Do you remember testifying at a
7 hearing back in September of 2014?

8 A. Yes.

9 Q. Were you under oath at the time?

10 A. Yes.

11 Q. Did you make the following answers to the
12 following questions, page 123.

13 THE COURT: Line, please.

14 MR. BERGER: I'll start at the top.

15 THE COURT: Line one? I'm just asking.

16 MR. BERGER: Yes.

17 Q. "QUESTION: You spoke with the district
18 attorney and when you did that, Detective Pacheco was
19 present?

20 "ANSWER: Yes, he was.

21 "QUESTION: And you were in a room and it was
22 in his office, I assume?

23 "ANSWER: Yes.

24 "QUESTION: So you heard Detective Pacheco
25 talk to the district attorney as well?

Det. Baran - People - Cross

975

1 "ANSWER: Yes.

2 "QUESTION: So you could hear what he was
3 saying?

4 "ANSWER: Yes.

5 "QUESTION: And he was sitting next to you
6 and near you when you were talking to Mr. Perri?

7 "ANSWER: Yes."

8 Q. Did you make those answers to those questions?

9 MR. PERRI: Objection. Your Honor, there has
10 been no inconsistency that has been brought out. If
11 he's asking to refresh the witness's recollection, he
12 may do so.

13 THE COURT: Overruled. You can answer the
14 question. Do you remember giving those answers to
15 those questions?

16 A. Yes.

17 Q. And were they true when you gave them?

18 A. Yes.

19 Q. And are they true today?

20 A. Yes.

21 Q. My question to you then is: Then Detective
22 Pacheco was with you in the room with you when you spoke to
23 Mr. Perri, correct?

24 A. I guess he was, yes.

25 Q. When you say, I guess he was, does that refresh

Det. Baran - People - Cross

976

1 your recollection, or do you still dispute that?

2 A. I'm not disputing it. I just don't have any
3 direct memory of him being in the room while we discussed
4 it.

5 Q. Your memory was better then than it is today?

6 A. Yes, it is. Yes, it was.

7 Q. Did you discuss with Mr. Perri in Detective
8 Pacheco's presence the circumstances of the taking of the
9 statement of Mr. Ramos?

10 A. Are you referring before the hearing or before the
11 trial?

12 Q. Yes. You told me you didn't talk to Detective
13 Pacheco prior to the trial, correct?

14 A. Correct.

15 Q. I could only be referring to the hearing, and I'm
16 asking prior to the hearing, did you discuss with Detective
17 Pacheco the circumstances of the taking of the statement;
18 did you not?

19 A. Yes.

20 Q. When you spoke to Crystal Ramirez, she never told
21 you she observed any alleged sexual abuse, correct?

22 A. Correct.

23 Q. You have told us here today that Mya told you that
24 this happened before, correct?

25 A. Yes.

Det. Baran - People - Cross

977

1 Q. That's what you just testified to, correct?

2 A. Yes.

3 Q. But she didn't tell you -- you say she nodded her
4 head, correct?

5 A. Correct.

6 Q. You had to interpret her head nodding your own
7 way, correct?

8 A. That's correct.

9 Q. Did you make a note about even asking her that
10 question and her nodding her head?

11 A. No.

12 Q. Did you ask her any details about how that prior
13 happenings occurred?

14 A. No.

15 Q. So you asked no follow-up questions after you say
16 she nodded her head, correct?

17 A. Correct.

18 Q. Well, now, detective, it could make a difference
19 as to what charges you were going to charge the defendant
20 with, if any, if she gives you details about the
21 circumstances of other instances and the length of time over
22 which they occurred, correct?

23 A. That's correct.

24 Q. But you didn't bother to do that in this case?

25 A. I did not do that in this case because we were

Det. Baran - People - Cross

978

1 going to do it later.

2 Q. You have an answer, you say, from a girl, a
3 six-year old, and you didn't do it later, did you?

4 A. There came a point where we did not do it later,
5 correct, or there did not come a point where we did it
6 later.

7 Q. You told Crystal Ramirez at the hospital, what the
8 protocol was going to be in this particular case, correct?

9 A. That's correct.

10 Q. And you told her that Mya was going to be examined
11 by a professional, a nurse professional, right, a
12 professional nurse examiner, correct?

13 A. Yes.

14 Q. And you said to her, that you are going to be
15 returning later and after the completion of the exam, you
16 are going to take the family back to the office of special
17 victims unit in Bethpage so we can conduct a videotape
18 interview of Mya, correct?

19 A. That's correct.

20 Q. You told that to Crystal Ramirez, correct?

21 A. Correct.

22 Q. And you didn't do it, did you?

23 A. Correct.

24 Q. You never did it, did you?

25 A. Correct.

Det. Baran - People - Cross

979

1 Q. And the protocol requires that the interview be
2 conducted by somebody skilled in interviewing child alleged
3 victims of sexual abuse, correct?

4 A. Correct.

5 Q. And there are such people at the special victims
6 unit, aren't there?

7 A. Yes, there are.

8 Q. And that has been done before where the children
9 are interviewed and videotaped, correct?

10 A. Every day.

11 Q. Every day?

12 A. Uh-huh.

13 Q. But it wasn't done here?

14 A. Correct.

15 Q. Now, what time did you say that rights were given
16 to Mr. Ramos?

17 A. I said at 11:40 p.m.

18 Q. And when did you attempt to start taking the
19 statement?

20 A. Immediately after the rights were given.

21 Q. Within a few minutes after the rights?

22 A. No immediately after.

23 Q. Immediately.

24 A. Correct.

25 Q. When was the statement completed?

Det. Baran - People - Cross

980

1 A. About 12:30.

2 Q. Did you make a notation about the time of the
3 completion?

4 A. No.

5 Q. How do you know 12:30?

6 A. I think you asked me at the hearing about how long
7 did it take to do the statement, and I think I said about 45
8 minutes.

9 Q. I asked you when the time of completion was, you
10 said you didn't know.

11 A. And I think I estimated about 45 minutes after we
12 begin.

13 Q. So you're approximating?

14 A. Yes, sir.

15 Q. That's based upon your own independent
16 recollection?

17 A. My recollection at the time of the hearing.

18 Q. Right. You didn't say at the time of the hearing
19 it was 12:30. You said -- what you said was you didn't know
20 what time you completed it?

21 A. You are correct, I did not note the time we
22 finished.

23 Q. And your recollection, we established, was better
24 at the hearing than it is here today, correct?

25 A. Probably.

kmm

Det. Baran - People - Cross

981

1 Q. What you are telling us with respect to the
2 statement, People's 10 in evidence, is that the defendant
3 read the first paragraph aloud, you said; is that what you
4 said to us before?

5 A. Yes.

6 Q. And by the first paragraph, do I take it to mean
7 the one that says my name is Daniel Ramos, I live at 781
8 Coleridge Road in Uniondale?

9 A. Yes.

10 Q. And he read what his Social Security number was
11 and he corrected that?

12 A. I don't think he read it. He looked at it and
13 said that's not my social, or that's not my correct social.

14 Q. I'm a little confused about that. Did you say he
15 read aloud the first paragraph?

16 A. That's correct.

17 Q. Does the first paragraph contain the Social
18 Security number?

19 A. It does.

20 Q. Did he make the correction at that point?

21 A. I'm sorry. Yes, he made the correction at that
22 point.

23 Q. At that point?

24 A. Yes.

25 Q. Then he didn't read anymore of it; is that

Det. Baran - People - Cross

982

1 correct?

2 A. Well, he finished whatever few words that came
3 after the social, and then he began to read in an undertone.

4 Q. What does that mean, undertone?

5 A. That means he is speaking audibly, but not loud
6 enough so I could actually make out the words.

7 Q. Audibly, but not loud enough so that you could not
8 make out the words?

9 A. Correct.

10 Q. Now, there was -- did you make an audiotape or
11 videotape of this entire interview process where you say the
12 rights were given and the statement was given?

13 A. No, I did not.

14 Q. But such equipment exists, doesn't it?

15 A. Yes, it does.

16 Q. But you chose not to do that in this case,
17 correct?

18 A. There was no equipment available. There was no
19 choice.

20 Q. What do you mean no equipment? In a sex crimes
21 unit there is no equipment available?

22 A. That's correct.

23 Q. Have you ever taken an audio and video statement
24 from a subject before?

25 A. Before the arrest of the defendant?

Det. Baran - People - Cross

983

1 Q. No, at any time.

2 A. Yes.

3 Q. And you are saying that the equipment didn't exist
4 in the sex crimes unit or --

5 A. That's correct. When I answered yes, that I have
6 taken video statements, that is not in a sex crimes unit.

7 Q. You said it went into effect in November of 2014?

8 A. Yes.

9 Q. Are you familiar with the Ivan Filobos case?

10 A. No.

11 MR. PERRI: Objection.

12 THE COURT: Overruled.

13 Are you familiar with it?

14 THE DEFENDANT: No.

15 Q. When you say the audio and videotapes, Nassau
16 County has audio and video equipment, does it not?

17 A. You were talking about the whole county or the
18 police department?

19 Q. Yes.

20 A. I'm not aware of the county's equipment resources,
21 but the police department has two locations where at that
22 point it had two locations where the defendants could be
23 videotaped. We're now the third, but there are only two at
24 that point.

25 Q. Is People's 10, the statement, a verbatim

Det. Baran - People - Cross

984

1 statement from the defendant?

2 A. I believe it is, yes.

3 Q. Before you read him his -- you are --

4 MR. BERGER: Withdrawn.

5 Q. You are aware of the fact that the defendant did
6 tell Crystal that he didn't do anything to Mya, correct?

7 A. That's correct.

8 Q. And when did you learn that?

9 A. When I read her statement when I returned to the
10 medical center for the second time.

11 Q. You learned it at the medical center, correct?

12 A. Correct.

13 Q. Before you went to interview Daniel Ramos,
14 correct?

15 A. Correct.

16 Q. So when you discussed the rights card, was
17 Detective Pacheco in the room?

18 A. No, he was not.

19 Q. Now, you meet the defendant in this eight by eight
20 room, correct, for the first time?

21 A. Yes.

22 Q. You go into the room, you are the only one there
23 with the defendant, correct?

24 A. Yes.

25 Q. What is the first thing you said to him?

Det. Baran - People - Cross

985

1 A. I don't remember the first thing I said to him.
2 It might have been hello, I'm Detective Baran.

3 Q. Besides introducing yourself, what was the first
4 thing that was said?

5 A. I asked him if he needed anything to eat or drink
6 or use the bathroom, any medical issues that I need to be
7 aware of.

8 Q. And then after that?

9 A. I want to talk to you about what happened, but I
10 need to read you your rights first.

11 Q. Did you tell him what he was being charged with?

12 A. No.

13 Q. So he said to you, he felt more comfortable
14 getting his rights in Spanish?

15 A. He preferred Spanish.

16 Q. And you could tell that he was Hispanic; could you
17 not?

18 A. Yes.

19 Q. English was his second language, you could tell
20 that?

21 A. I'm not a linguist. I don't know how many
22 languages he speaks and where English falls in that order.

23 Q. But he told you he is more comfortable having his
24 rights in Spanish, correct?

25 A. Yes, that's correct.

1 Q. And your words before were, it's very technical,
2 the rights card, right?

3 A. There's technical language. I don't think I said
4 very.

5 Q. What does that mean there's technical language?

6 A. It means we're reading a card that apparently was
7 written by attorneys or the Court, by somebody other than
8 the words that the defendant might use themselves on a daily
9 basis.

10 Q. In other words, there's legal language there that
11 you might have to be a lawyer to understand, correct?

12 A. I don't know if you need to be a lawyer to
13 understand it, but certainly you might feel more comfortable
14 in your native language getting that.

15 Q. You know Spanish is a native language, right?

16 A. I assumed it was.

17 Q. You assumed it because of his accent?

18 A. Yes, and his name.

19 Q. And you wanted to be sure that he got his rights
20 in the language that he understood, correct?

21 A. That's correct.

22 Q. Because you knew he would understand Spanish,
23 right?

24 A. I assumed he would understand Spanish. That's why
25 I made the offer.

Det. Baran - People - Cross

987

1 Q. And if you gave him his rights without telling him
2 the charges, correct?

3 A. That's correct.

4 Q. So you had Detective Pacheco come in and read him
5 his rights in Spanish, correct?

6 A. Yes.

7 Q. Except you don't know what Detective Pacheco read
8 him because you don't speak Spanish, do you?

9 A. No, I don't, and yes, I don't know what he read to
10 him.

11 Q. But you told Mr. Perri he read him his rights in
12 Spanish before?

13 A. Yes.

14 Q. But that wasn't accurate, was it?

15 A. I thought Mr. Perri phrased the question that
16 appeared he was reading the rights from the card in Spanish.
17 To the best of my knowledge, that's what he did.

18 Q. To the best of your knowledge, you mean you are
19 guessing at that point? You don't know?

20 A. Since I don't understand Spanish, I had no direct
21 knowledge of what was being read to him.

22 Q. Right. And it may be you may have even heard
23 Detective Pacheco speaking in what sounded to you like the
24 Spanish language, but you don't know what the content of
25 what he said was, do you?

Det. Baran - People - Cross

988

1 A. That's correct.

2 Q. So you knew his primary language was Spanish and
3 you wanted to understand the rights, so you had it read to
4 him in Spanish, didn't you have Pacheco try interviewing in
5 Spanish?

6 A. I would have been prepared to do that if the
7 defendant had indicated he did not want to try to talk to me
8 in English.

9 Q. He said he would try to talk to you in English,
10 correct?

11 A. Correct.

12 Q. But it was unsuccessful, wasn't it?

13 A. I don't think so.

14 Q. Did you even attempt, since you recognized that
15 Spanish was his primary language, to get a Spanish-speaking
16 detective to interview him?

17 A. The word attempt is a mischaracterization. I gave
18 him the option, and he said he would try in English.

19 Q. You made an effort to get him the rights card to
20 be read by a Spanish-speaking detective?

21 A. I gave him that option too, and he preferred
22 Spanish for the rights card, and he said he would try
23 English for the statement.

24 Q. My question is: He already told you he was more
25 comfortable getting his rights in Spanish, did you even

Det. Baran - People - Cross

989

1 attempt to get a Spanish-speaking detective to come in and
2 interview him?

3 MR. PERRI: Objection.

4 THE COURT: Overruled. Do you understand the
5 question?

6 A. Yes.

7 Q. You did?

8 A. Yes.

9 Q. What attempts did you make?

10 A. Detective Pacheco was standing right there next to
11 me, and I gave the defendant the option to speak in English
12 or go with Detective Pacheco in Spanish.

13 Q. Let me ask you: If you made this statement to
14 this answer to this question back at the hearing in
15 September of 2014, page 150, line 14.

16 By the way, you were under oath at the time?

17 A. Yes.

18 Q. "QUESTION: Now, he had already told you he
19 was more comfortable in getting his rights in Spanish.
20 Did you attempt to get a Spanish-speaking detective to
21 come in and interview him?

22 "ANSWER: No."

23 Q. Did you make that answer to that question?

24 A. Yes, I did.

25 Q. Was that true then?

Det. Baran - People - Cross

990

1 A. Yes.

2 Q. Well, you just told us a moment ago you did
3 attempt to get a Spanish-speaking detective, so which answer
4 is correct?

5 A. I told you the word attempt is a
6 mischaracterization both at the hearing and today. The way
7 things happen is Detective Pacheco had just finished reading
8 his rights. He was available. I gave the defendant the
9 option. For the rights he preferred Spanish, but for the
10 statement, he preferred English, but there was no attempt --
11 I can't force the defendant to choose Detective Pacheco over
12 me. I gave him the option.

13 Q. I just asked you before you read from the hearing,
14 did you attempt to get a Spanish-speaking detective and you
15 said yes?

16 A. I told you that the word attempt is a
17 mischaracterization.

18 Q. You used it. You answered the question.

19 MR. PERRI: Objection.

20 THE COURT: Sustained.

21 Q. How is attempt a mischaracterization?

22 MR. PERRI: Objection.

23 THE COURT: I'll let you answer that.

24 A. It implies that he was trying unsuccessfully.

25 That's not the case. I had a Spanish-speaking detective

Det. Baran - People - Cross

991

1 right there.

2 Q. Attempting is trying unsuccessful?

3 A. Trying to --

4 Q. Go ahead, detective.

5 A. It implies I was trying to do something, or maybe
6 I didn't try to do something, but that's not the case.

7 Q. The question is: Did you try to do something?

8 A. It's not a relevant question because the detective
9 was right there with me. The only thing I attempted to do
10 was give the defendant the option of what he was more
11 comfortable with.

12 Q. He wasn't in the room with you, next to you, was
13 he, Detective Pacheco?

14 A. Yes, he was.

15 Q. Detective Pacheco was there when you say you asked
16 the defendant if he wanted to speak to you in English or
17 Spanish?

18 A. I didn't ask the defendant if he wanted to speak
19 to me in Spanish. I said, we're going to -- something along
20 the lines, I'll take your statement now. Do you want to try
21 English, or do it in Spanish, and he said, I will try
22 English.

23 Q. You told him you were going to take a statement
24 now and you still haven't told him what it is you are
25 charging him with?

Det. Baran - People - Cross

992

1 A. It wasn't an appropriate time to tell him. If he
2 would have asked me, I would have told him, but it just
3 didn't come out of that conversation at that time.

4 Q. That wasn't an appropriate time to tell him what
5 he was charged with?

6 A. It's not. That's correct. It's not the
7 appropriate time.

8 Q. Shouldn't you be telling him what he is charged
9 with before you will read him his rights or at the very
10 least before you will take a statement from him?

11 MR. PERRI: Objection.

12 THE COURT: Overruled. I'm not aware of any
13 legal requirement that I do that, and I'm not aware of
14 any moral or ethical requirement if he asked me. He
15 apparently thought he knew or he didn't care.

16 Q. You say if he asked you, you would have told him.

17 A. Yes. I say, I would have.

18 Q. When you gave him the pad and paper to write an
19 apology letter, he did that in Spanish?

20 A. Yes.

21 Q. That was the language he was comfortable with,
22 correct?

23 MR. PERRI: Objection.

24 THE COURT: Overruled. Do you understand the
25 question?

Det. Baran - People - Cross

993

1 A. I assume he was more comfortable, but as far as I
2 could tell, he was completely fluent in English. Maybe he
3 just wanted to write in Spanish, for some other reason other
4 than comfort.

5 Q. Did you ever ask the defendant directly if he
6 licked Mya's vagina?

7 A. I never asked him directly if he licked her
8 vagina, not that I recall anyway right now.

9 Q. And you never told him that is what he was being
10 charged with, correct?

11 A. Well, that's not the case. There came a point
12 later when he was told what he was charged with but not
13 before the statement.

14 Q. You mean, not before he put his signature on the
15 statement?

16 A. Correct. Or at least he wasn't told by me. He
17 might have been told by Detective Pacheco or the cops but he
18 wasn't told by me.

19 Q. Whatever you may have told him, you told him after
20 he put his signature on what is now People's 10?

21 A. I never told him at all even after the signature,
22 but I believe he was told by the sergeant at some point in
23 time.

24 Q. I thought you told us you told him afterwards?

25 A. No, I just said he was told.

Det. Baran - People - Cross

994

1 Q. You were present when he was told?

2 A. No, I wasn't.

3 Q. How do you know he was told?

4 A. I don't have direct knowledge.

5 Q. So you are guessing?

6 A. Well, there's usually a protocol. I can't say it
7 was followed at that night.

8 Q. You made up the answer just now about him being
9 told?

10 MR. PERRI: Objection.

11 THE COURT: Sustained.

12 Q. So if I ask you the question directly, was he
13 told?

14 A. Not by me.

15 Q. And nobody in your presence?

16 A. Correct.

17 Q. Did you witness -- did you put your signature on
18 People's 9, which is called the rights card?

19 A. Yes.

20 Q. Now, when you put your signature there, were you a
21 witness to the defendant waiving his rights?

22 A. I was just -- since I don't speak Spanish, and
23 although I do recognize the word si, and I did hear him say
24 si, I wasn't putting my name on the card as witnessing his
25 waiving of his right as much as I was putting my name on the

Det. Baran - People - Cross

995

1 card, signing the card in three places and writing si in two
2 of those places.

3 Q. You just witnessed putting his signature on the
4 card?

5 A. That's the way I saw it at that time.

6 Q. Not the actual waiving of the rights?

7 A. That's the way I saw it at that time.

8 Q. That's the way what?

9 A. I saw it at that time.

10 Q. By the way, did Detective Pacheco engage in any
11 colloquy even if it was in Spanish between the defendant
12 after you say he read something in Spanish?

13 A. I wouldn't know, since I don't speak Spanish.

14 Q. Right. Did Detective Pacheco, just in your
15 observation, just read straight from the card, and although
16 you don't know what he was reading, did he stop at any time
17 and have a question and answer in Spanish with the
18 defendant?

19 A. I don't remember.

20 Q. Did the defendant ask any questions after the card
21 was read?

22 A. I don't remember either way.

23 Q. He might have, he might not have, you just don't
24 recall?

25 A. I just don't recall.

Det. Baran - People - Cross

996

1 Q. And is it Detective Pacheco remained in the room
2 while you were going to question -- attempting to question
3 him?

4 A. Yes.

5 Q. How long did you ask the defendant in English
6 about which language he wanted to speak to you to be
7 interviewed in?

8 A. As long as it takes to ask one question.

9 Q. Which was?

10 A. Something along the lines of, do you want to talk
11 to me in English, or do you want Detective Pacheco to talk
12 to you in Spanish?

13 Q. And Detective Pacheco was there when you said
14 that?

15 A. Yes.

16 Q. And the defendant, according to your testimony,
17 said he would try to talk to you in English?

18 A. He said, I would try English.

19 Q. How long after you got that answer was Detective
20 Pacheco in the room?

21 A. Not more than a few minutes.

22 Q. Did you engage in any questions of the defendant
23 while Detective Pacheco was still there?

24 A. I think I said to him, well, yes, I did engage in
25 questions, and the first question was, tell me what happened

Det. Baran - People - Cross

997

1 with Mya.

2 Q. And Detective Pacheco was there?

3 A. Yes.

4 Q. And what did the defendant say?

5 A. He began to tell me the story of how he was
6 working that day, but he was off that day and it became a
7 little confusing about being off, but working and that he
8 went over to Mya's house, and he had something to drink.
9 And at that point, I think I was confident or satisfied he
10 was fluent in English and might have given Detective Pacheco
11 a look or a nod, and he quietly leaves the room.

12 Q. You gave him a nod suggesting he could leave?

13 A. Or a look.

14 Q. Now, you said the defendant gave you a whole
15 narrative that is contained in People's 10; is that right?

16 A. Yes.

17 Q. You are not saying that the defendant read -- you
18 already told us the defendant didn't read People's 10 aloud,
19 so you could hear him uttering the words; is that correct?

20 A. Yes, that's correct.

21 Q. The only part you say he did was the first part
22 where the name and address are and Social Security number,
23 right?

24 A. Yes.

25 Q. Now, at some point in time you decided to have

Det. Baran - People - Cross

998

1 Detective Pacheco come in and read People's 10 to him in
2 Spanish?

3 A. Yes.

4 Q. But you don't know that Detective Pacheco read the
5 entire statement to him, do you?

6 A. No, I don't.

7 Q. You know he read something to the defendant, but
8 not what the content was?

9 A. Correct.

10 Q. Now, you say that the defendant gave you that
11 entire statement in English and you were taking it down
12 verbatim, right?

13 A. I try to take down as much as I can verbatim.
14 There just comes a point in time where I can't help myself
15 and just clean up some of the grammar and semantics and make
16 it a coherent statement. He told me, for instance, he was
17 off that day and when he finished work he went to Crystal's
18 house. If I took that down verbatim, it would make no
19 sense.

20 Q. You told me before when I asked you if this
21 statement was verbatim and you answered yes.

22 A. I did say yes, and I thought you would ask me if
23 it was mostly verbatim, or did I try to take it verbatim.
24 It would be inaccurate to say it was a verbatim statement.
25 I try as much as possible to keep as close to the words and

Det. Baran - People - Cross

999

1 the phrases that he uses, but sometimes it's in the interest
2 of making it coherent. I clean it up a little bit.

3 Q. Did you tell me that at the hearing?

4 A. I don't remember what I told you at the hearing.

5 Q. Let me read to you then page 147, line 23, and
6 reminding, the questions, you were under oath at that
7 hearing?

8 A. Yes.

9 Q. Did you make the following answer to the following
10 question in what is contained on People's 5, that was the
11 exhibit statement then a verbatim statement of what he said
12 and your answer was, it is. Was that true? First of all,
13 did you make that statement?

14 A. Yes, I did.

15 Q. Was it true?

16 A. It was true, as I understood the question, but as
17 you are explaining it here to me, I did not understand the
18 question properly at that time. I tried to give a true
19 answer to the statement to the question as I understood it.

20 Q. The question was -- I'll read it again. Is what
21 is contained on People's 5 a verbatim statement of what he
22 said; is that too complicated a question?

23 MR. PERRI: Objection.

24 THE COURT: Sustained.

25 Q. Detective, what about that question didn't you

Det. Baran - People - Cross

1000

1 understand?

2 A. I read into the question.

3 Q. What do you mean you read into it?

4 A. I read into it, and I just assumed you knew it, it
5 would not be a verbatim statement considering some of the
6 terminology and the grammar.

7 Q. You assumed I knew it was not verbatim?

8 A. And I also testified when he was talking, I would
9 redirect him and keep him on track and exclude tangents that
10 he might have gone on in order to keep the sum and substance
11 of what he said, but to keep it in a well understood
12 statement.

13 Q. Detective, I'm sure there were plenty of tangents
14 that were not relevant to whatever you are asking him. I
15 assume you left them out. My question is: What was
16 contained on exhibit 5, now exhibit 10, I asked you if that
17 was verbatim, his words and you said yes?

18 A. Yes.

19 Q. Is that true?

20 A. That's not true.

21 Q. You testified incorrectly at a hearing which you
22 were under oath, correct?

23 A. That's correct.

24 Q. So that page 148, line four, I'm sorry, line one.

25 Did you make the following answer to the following question?

kmm

Det. Baran - People - Cross

1001

1 "QUESTION: So you may have asked various
2 questions. You wrote down or typed down, typed
3 verbatim what he was saying to you?

4 "ANSWER: Yes. I might have asked him to
5 explain something to me, but when he explained it, I
6 typed what he said.

7 "QUESTION: Exactly word for word?

8 "ANSWER: Yes."

9 Did you make those answers to those
10 questions?

11 A. Yes, I did.

12 Q. Those answers aren't correct either, is it?

13 A. Not as I understand the word verbatim now.

14 Q. What did you understand the word verbatim to be
15 before now?

16 A. Mostly in sum and substance.

17 Q. You know there's a difference between sum and
18 substance and verbatim, did you not?

19 MR. PERRI: Objection.

20 THE COURT: Sustained.

21 Q. Sum and substance is the direct opposite of
22 verbatim, isn't that right, detective?

23 THE COURT: Do you understand the question?

24 A. I'm not sure they are directly opposite. I think
25 they share and consent and circle.

Det. Baran - People - Cross

1002

1 Q. Verbatim means word for word; you understand that?

2 A. Now I do.

3 Q. You only understood that now, you didn't
4 understand before today?

5 A. Correct. I'm not sure how I understood it back in
6 September.

7 Q. So, you are saying the defendant told you
8 verbatim, not verbatim, I told her I was going to tickle
9 her, and I pulled down her pants and underwear and tickled
10 her pussy with my mouth; is that a verbatim statement?

11 A. I'm very confident that's a verbatim statement.
12 To say the entire statement for the two pages is verbatim, I
13 think it would be a mischaracterization as I understand it,
14 as I understand the word verbatim today.

15 Q. You mean what the word of verbatim is today?

16 A. Yes. I'm paraphrasing, yes.

17 Q. I'm sorry?

18 A. Yes, I have.

19 Q. Now, you said -- how long did you testify before
20 that it took Detective Pacheco to read People's 10 in
21 Spanish?

22 A. I thought it took between ten, ten minutes,
23 twelve, thirteen. That's my feeling about how long it took.

24 Q. Did you ever estimate it took between two and
25 twelve minutes?

Det. Baran - People - Cross

1003

1 A. Yes.

2 Q. So is that accurate?

3 A. It is really probably closer to ten to twelve or
4 ten to thirteen.

5 Q. Is that because Detective Pacheco Spanish --

6 MR. BERGER: Withdrawn.

7 Q. Did the defendant interrupt Detective Pacheco at
8 any time while he was reading that statement to him in
9 Spanish?

10 A. I don't recall him doing so, or I don't recall him
11 doing so.

12 Q. Now, you asked Mr. Ramos to initial certain parts
13 of the statement?

14 A. That's correct.

15 Q. Even though you don't know if he knew what the
16 meaning of those parts were, do you?

17 MR. PERRI: Objection.

18 THE COURT: Sustained as to form. Ask it
19 again.

20 Q. You told us before that only part of this
21 statement that he read allowed, that you could decipher, was
22 the first paragraph, correct?

23 A. That's correct.

24 Q. Everything else was, as you put it, was in an
25 undertone?

Det. Baran - People - Cross

1004

1 A. That's correct.

2 Q. Kind of like muttering, making sounds, but you
3 couldn't tell what he was saying, right?

4 A. Yes.

5 Q. So you don't know if he actually read the body of
6 this statement, do you?

7 A. I do because on one particular place he made the
8 correction. He pointed out to me there was a correction to
9 be made.

10 Q. What correction did he point out to you?

11 A. Little girl.

12 Q. When did he do that?

13 A. Sometime after he began to read or look at the
14 statement and mutter or mumble or whisper.

15 Q. Was anybody in the room with you when you say that
16 happened?

17 A. No.

18 THE COURT: Find a good place to break. You
19 can go a little further but find a good place to break.

20 Q. Did you ever ask him to initial the part of the
21 statement where it says, I told her I was going to tickle
22 her, and I pulled down her pants and underwear and I tickled
23 her pussy with my mouth; did you ever ask him to initial any
24 part there?

25 A. No, only corrections.

Det. Baran - People - Cross

1005

1 MR. BERGER: This would be a good time.

2 THE COURT: Have I good. Thank you.

3 Detective, you can step down. See you
4 tomorrow morning.

5 Ladies and gentlemen, before I let you go for
6 the night, let me give you the admonitions again. Keep
7 an open mind throughout the trial. Do not discuss the
8 case amongst yourselves or with anyone else during the
9 trial. Do not permit anyone to discuss the case in
10 your presence. Do not talk to the lawyers, witnesses
11 or the defendant about anything during the trial.

12 Do not visit or view the place where the
13 charged crime was allegedly committed or any other
14 place involved in the case.

15 If there is any news coverage of the case, do
16 not read or listen to any accounts or discussions of
17 the case reported by the news media.

18 Do not attempt to research any fact, issue or
19 law related to this case or by discussion with others,
20 by research in a library or on the internet or by any
21 other means or source.

22 Have a greet evening. See you all back here
23 at 10:00 a.m., please. Thank you.

24 (Whereupon, the jury exited the courtroom and
25 the trial was adjourned to May 14, 2015.)

1006

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 43

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 742N/14

5 -against- :

6 DANIEL RAMOS, :

7 Defendant. : Jury Trial

8 -----X

9 May 14, 2015

10 262 Old Country Road

11 Mineola, New York

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B E F O R E:

HONORABLE TERESA K. CORRIGAN,
Acting Supreme Court Justice

A P P E A R A N C E S:

(As Previously Noted)

* * * * *

THE CLERK: Case on trial continued,

Indictment Number 742N of 2014, People of the state New
York vs. Daniel Ramos.

All parties are present. The Spanish
interpreter, Carmen Knight, is present.

Are the People ready to proceed?

MR. PERRI: Yes, your Honor.

MR. BERGER: Yes.

kmm

Det. Baran - People - Cross

1007

1 THE CLERK: The jury is not present at this
2 time. They're on their way.

3 THE COURT: Anything for the record before we
4 bring in the jury?

5 MR. PERRI: No, your Honor.

6 MR. BERGER: No, your Honor.

7 (Whereupon, the jury entered the courtroom.)

8 M A U R I C E B A R A N, Detective, called on behalf of
9 the People, having been previously sworn, took the
10 witness stand and testified as follows:

11 THE CLERK: Do both sides stipulate all sworn
12 jurors are present?

13 MR. PERRI: Yes, your Honor.

14 MR. BERGER: Yes, your Honor.

15 THE CLERK: Detective, you are reminded you
16 are still under oath.

17 THE WITNESS: Yes.

18 THE COURT: Good morning. I hope you had a
19 nice evening.

20 Mr. Berger, you may inquire.

21 CROSS-EXAMINATION

22 BY MR. BERGER: (Continuing)

23 Q. Detective, drawing your attention to that point
24 where shortly after you say that Detective Pacheco read the
25 rights to the defendant and signed a card, did you then,

Det. Baran - People - Cross

1008

1 after that happened, within a minute or two give the signal
2 to Detective Pacheco to leave?

3 A. Yes.

4 Q. And he left?

5 A. Yes, it wasn't so much a signal to leave, in my
6 mind, it was a signal I have it under control. He could
7 still leave whenever he wished.

8 Q. Did you give him a word or a signal and then he
9 left?

10 A. I gave him a look, I believe.

11 Q. Something to indicate it's okay for him to leave,
12 correct?

13 A. Something to indicate I had it under control, that
14 the defendant was speaking in perfect English, and I didn't
15 need Detective Pacheco to be there for a translation.

16 Q. Okay. Now, drawing your attention to that point
17 in time where you said that you asked Mya if this ever had
18 been and you say she nodded her head; did you ask her when
19 this had happened before?

20 A. No, I did not.

21 Q. You asked when you first saw Mya, you were in the
22 hospital, correct?

23 A. Yes.

24 Q. She was with her mother?

25 A. No.

Det. Baran - People - Cross

1009

1 Q. She was not with her mother?

2 A. No.

3 Q. Where was she?

4 A. In an examination room.

5 Q. By herself?

6 A. There was somebody else with her from the
7 hospital.

8 Q. The nurse examiner?

9 A. No.

10 Q. So was she lying down or standing when this
11 happened?

12 A. She was on a bed.

13 Q. And you say that she nodded her head, correct?

14 A. Yes.

15 Q. Did you ask her, for example, what kind of abuse
16 happened before?

17 A. No.

18 Q. Did you ask her where it happened before?

19 A. No.

20 Q. Did you ask her how many times it happened before?

21 A. No.

22 Q. And I think you told us that you never made a
23 notation or memo about this conversation you had; is that
24 correct?

25 A. That's correct.

Det. Baran - People - Cross

1010

1 Q. Did you ask her what preceded the so-called eating
2 her coochie? Did you ask her what preceded that?

3 A. Well, I asked her what happened today, with Daniel
4 and she -- what happened today. And she responded he ate my
5 coochie. It wasn't a specific question what happened before
6 that. It was a general question, what happened today.

7 Q. You asked her -- you never met her before,
8 correct?

9 A. Correct.

10 Q. You walk into the room and you say what happened
11 today?

12 A. Yes.

13 Q. And she says he ate my coochie?

14 A. Yes.

15 Q. That's it?

16 A. Yes.

17 Q. And you didn't ask any questions as to how it
18 happened?

19 A. Correct.

20 Q. Did you ever ask Mr. Ramos why he tickled her
21 pussy with his mouth?

22 A. No.

23 Q. Did you ask him whether he did it for sexual
24 gratification?

25 A. No.

Det. Baran - People - Cross

1011

1 Q. Did you ask him if he ever done that before?

2 A. I don't remember if I did or didn't.

3 Q. Do you think you may have asked him?

4 A. I don't remember asking him if he had done that
5 before.

6 Q. You never asked that question?

7 A. I don't believe I did.

8 Q. There came a time when you offered the defendant
9 to have the statement read to him in Spanish, you say,
10 correct?

11 A. Correct.

12 Q. You didn't read it to him in English, did you?

13 A. No, I did not.

14 Q. You say he was speaking such clear English,
15 understood it perfectly and yet you didn't read the
16 statement back to him in English?

17 A. Correct.

18 Q. Instead you asked Detective Pacheco to come in and
19 read the statement in Spanish?

20 A. After he asked me to have it read back to him in
21 Spanish that's what I did.

22 Q. He asked you to have it read in Spanish?

23 A. Yes.

24 Q. Did he tell you why he wanted it read back in
25 Spanish?

Det. Baran - People - Cross

1012

1 A. I made the offer and he accepted the offer.

2 Q. He wanted it to be read in Spanish?

3 A. I made the offer initially and he accepted the
4 offer.

5 Q. And you didn't ask him why he needed it to be read
6 in Spanish? According to you, he had just given the
7 statement in English.

8 A. I don't know if it needed to be read in Spanish.
9 I asked him if he would like Detective Pacheco to read it in
10 Spanish and he said yes.

11 Q. Why did you ask Detective Pacheco? Why did you
12 even give that option to the defendant?

13 A. Because I thought there was a possibility there
14 might come a point in time where he is going to come to
15 court and say I don't understand any English.

16 Q. Why would you think that when you are talking and
17 totally you are having this exchange with him and it's all
18 in English?

19 A. I experienced it before with Spanish speaking
20 defendants.

21 Q. You knew, in fact, that the defendant did not give
22 you this statement in English, correct?

23 A. He gave me the statement in English.

24 Q. You knew if he read that statement in English he
25 would see that sentence in there that said he pulled down

Det. Baran - People - Cross

1013

1 her pajamas and licked her pussy, right?

2 A. He did say that.

3 Q. That's what you say he said. I understand if you
4 gave him that statement to read, if he could read English,
5 you didn't want him to see that statement, did you?

6 A. I don't understand the question.

7 Q. Because he never said that to you, right,
8 detective?

9 THE COURT: There's a question. You can
10 answer.

11 Q. He never said that to you?

12 A. Yeah, he said that.

13 Q. Now, you have Pacheco come in and you don't know
14 what Pacheco is reading because you don't understand
15 Spanish, right?

16 A. Correct.

17 Q. And Pacheco knows enough not to read a sentence in
18 Spanish to him because he might then deny, right?

19 MR. PERRI: Objection.

20 THE COURT: Sustained, as to what this
21 detective knows Detective Pacheco knows.

22 Q. You knew in this case because you are claiming you
23 had other clients, not clients, other suspects before who
24 claimed that they didn't understand English and you just had
25 and an inkling that the defendant might say that, right?

Det. Baran - People - Cross

1014

1 A. I usually do that with all my defendants that
2 speak Spanish and English.

3 Q. If preferred language is Spanish, shouldn't that
4 have been the language in which he was interviewed?

5 MR. PERRI: Objection.

6 THE COURT: Sustained as to form.

7 Q. He told you, according to you, he wanted it read
8 to him in Spanish, correct?

9 A. I don't know that he wanted to. When I made the
10 offer, he accepted it. He never expressed a desire to have
11 it read to him before I made the offer.

12 Q. You say you made an offer to him, right,
13 detective?

14 A. Yes.

15 Q. Going back to the time where you say that you
16 wanted Detective Pacheco to come in and give him his rights,
17 because you told us that the rights card contained technical
18 legal language; do you remember saying that yesterday?

19 A. Yes.

20 Q. But the defendant doesn't know it's technical
21 legal language, you didn't tell him that ahead of time, did
22 you?

23 A. I asked him if he would prefer it, to have the
24 rights card read in English and Spanish and he said,
25 Spanish, please.

Det. Baran - People - Cross

1015

1 Q. The defendant doesn't know that technical legal
2 language, he doesn't even know what the rights are?

3 MR. PERRI: Objection.

4 THE COURT: Sustained.

5 Q. Did you ask the defendant if he knows his rights?

6 A. No, I did not.

7 Q. This is the first time he has ever been arrested
8 in his life, correct?

9 MR. PERRI: Objection.

10 THE COURT: If you know.

11 A. At that point I had not known.

12 Q. You never bothered to see if he had previously
13 been arrested before?

14 A. At that point in time I had not done a criminal
15 history check on him.

16 Q. You say it was technical legal language and you
17 wanted it to be read to him in Spanish, correct?

18 A. No, I gave him the option. I didn't care either
19 way.

20 Q. What does he know about technical legal language?
21 Did you tell him the technical legal language?

22 MR. PERRI: Objection.

23 THE COURT: As to form.

24 Q. Did you tell him technical legal language was
25 involved with respect to the rights card?

Det. Baran - People - Cross

1016

1 A. I asked him if he wanted rights read to him in
2 Spanish or English.

3 Q. That's not the question. Did you tell him
4 technical legal language is about to be read to you, would
5 you rather to have it in English or Spanish?

6 A. I didn't say those words.

7 Q. Did you ever tell Detective Pacheco why it was you
8 were asking him to read the statement to him in Spanish?

9 A. I might have. I don't recall.

10 Q. Let me ask you if you made this answer to this
11 question back in September at the hearing. You were under
12 oath, correct, detective? Were you under oath at the time?

13 A. Yes.

14 Q. Page 201, line six.

15 "QUESTION: Did you tell him why you were
16 asking him to read it?

17 "ANSWER: No, I did not."

18 Did you make that answer to that question?

19 A. Yes, I did.

20 Q. Was that true then?

21 A. Yes.

22 Q. Is it true today?

23 A. It's true today.

24 Q. You didn't tell Detective Pacheco why it was you
25 were asking him to read the statement in Spanish; is that

Det. Baran - People - Cross

1017

1 correct?

2 A. I guess not.

3 Q. During the time that, detective, you say Detective
4 Pacheco was reading the statement in Spanish, did the
5 defendant ever interrupt him and ask him any questions?

6 A. I don't know.

7 Q. You say you asked the defendant if you wanted to
8 write a letter to them in Spanish, correct?

9 A. No.

10 Q. You say you asked the defendant if he wanted to
11 write an apology letter to Crystal and Mya; is that right?

12 A. Yes.

13 Q. And you asked him to do that for what purpose?

14 A. To gather additional evidence.

15 Q. Additional evidence. You had not been satisfied
16 with the statement you had?

17 MR. PERRI: Objection.

18 THE COURT: Sustained.

19 Q. How would that be additional evidence, detective?

20 A. I thought of it as an admission, an additional
21 admission in addition to what I had taken from him in
22 writing.

23 Q. And the admission in which he says, I pulled down
24 her pants, I told her I was going to tickle her, so I pulled
25 down her pants and underwear and I tickled her pussy with my

Det. Baran - People - Cross

1018

1 mouth; that wasn't a sufficient admission?

2 MR. PERRI: Objection.

3 THE COURT: Sustained.

4 Q. Was that not a satisfactory admission to you,
5 detective?

6 MR. PERRI: Objection.

7 THE COURT: Sustained.

8 Q. What other admission did you expect to get?

9 A. As many admissions from him that I could.

10 Q. You didn't ask him any details how it came about,
11 how many times he had done it before, you didn't ask any of
12 those questions, did you?

13 A. He told me how it came about.

14 Q. He told you what preceded this supposedly, you
15 didn't ask him if he had done this before?

16 A. I don't recall asking him if he done this before.

17 Q. You didn't ask him if he had done it before?

18 A. I don't recall if I had asked him if he had done
19 it before.

20 Q. Didn't I ask you a moment ago whether you asked
21 him that question and you told me you didn't?

22 A. I think I said I didn't recall and then, if I
23 didn't recall, I'm assuming the answer is no, I didn't.

24 Q. Detective, you are the carrying detective. You
25 are investigating sex crimes, correct?

Det. Baran - People - Cross

1019

1 A. Correct.

2 Q. It's important to know the history, isn't it, of
3 the defendant?

4 A. It was of no consequence at that point in time to
5 me.

6 Q. No consequence?

7 A. No.

8 Q. You didn't know if he had ever done this before or
9 done it to other children before, you didn't want to know
10 that?

11 A. I was only concerned with Mya at that point in
12 time.

13 Q. You weren't concerned with any other potential
14 children that might have been violated?

15 A. I was only concerned with Mya at that time.

16 Q. The answer is what, detective, you were not --

17 A. No.

18 Q. You were not concerned with other children?

19 A. No.

20 MR. PERRI: Objection.

21 THE COURT: Sustained.

22 Q. You weren't concerned whether or not this had been
23 done to other children before by this man?

24 MR. PERRI: Objection.

25 THE COURT: That is sustained.

Det. Baran - People - Cross

1020

1 Q. If you were concerned with Mya, didn't you want to
2 find out if it had happened to her before?

3 A. I would, but not from the defendant.

4 Q. Not from the defendant?

5 A. Correct.

6 Q. And you wouldn't want to know what the defendant
7 did to Mya before in other instances?

8 A. I would, but I would like to hear it first from
9 Mya.

10 Q. Why didn't you ask her?

11 A. It was not the appropriate location to interview a
12 six-year old.

13 Q. Did you go and interview her that night in the
14 interview room where you planned to do that?

15 A. That's correct.

16 Q. You didn't do it?

17 A. No.

18 Q. You had interviewed quickly at the sex crimes
19 unit, didn't you?

20 A. No.

21 Q. Where were you going to do that?

22 A. Do what?

23 Q. The interview?

24 A. With Mya?

25 Q. Yes.

Det. Baran - People - Cross

1021

1 A. In the safe center.

2 Q. Wherever that was, there was a place where you
3 could take her and interview her?

4 A. Yes.

5 Q. And you didn't do it?

6 A. Correct.

7 Q. Where is the safe center?

8 A. It's located in the same building as the special
9 victims squad.

10 Q. Same building, right?

11 A. Correct.

12 Q. You could have taken the defendant into that room
13 and interviewed him in this room, couldn't you have?

14 A. No.

15 Q. Why not?

16 A. No, the defendant is not allowed in the safe
17 center.

18 Q. Not allowed, why not?

19 A. That's the rules of the safe center.

20 Q. It's video equipment, correct?

21 A. They're not allowed in the safe center.

22 Q. Did you bother to get maybe a little tape recorder
23 to interview and have it on audio?

24 A. No.

25 Q. You didn't do that?

Det. Baran - People - Cross

1022

1 A. No.

2 Q. Do you have a smart phone?

3 A. Yes.

4 Q. They take videos, don't they?

5 A. Yes.

6 Q. You could have taken a video of the defendant
7 saying I pulled down her pants and tickled her pussy with my
8 mouth, you didn't do that, did you?

9 A. No, I did not.

10 Q. So you asked him to write the apology letter
11 because you wanted more evidence, you said?

12 A. I offered him if he would like to in order to
13 acquire more evidence.

14 Q. Didn't you say you wanted more evidence?

15 A. Yes, I did.

16 Q. You could have asked him more questions and gotten
17 more evidence, correct?

18 A. No, I thought the apology letter would be stronger
19 than more words on a statement that he already admitted to.

20 Q. But it wasn't, was it?

21 MR. PERRI: Objection.

22 A. I think it was.

23 THE COURT: Do you still have your objection?

24 The objection is overruled.

25 A. I think it was.

Det. Baran - People - Cross

1023

1 Q. You think it was. Did he say in the apology
2 letter that he licked her vagina?

3 A. I don't know.

4 Q. How could you think it was, if you don't know?

5 A. How do I think it was what?

6 Q. You said you thought the apology letter was a good
7 piece of evidence?

8 A. In the apology letter it would be a good piece of
9 evidence.

10 Q. You said you thought the apology letter in this
11 case was in fact a good piece of evidence?

12 A. No, I didn't.

13 Q. You didn't say that?

14 A. No, sir.

15 Q. You obtained at the time a statement in order to
16 get evidence in the case, correct?

17 A. Yes.

18 Q. And you felt you wanted him to write an apology
19 letter to get more evidence in the case, correct?

20 A. Yes.

21 Q. And that's because, detective, he never told you
22 what is contained in People's 10, insofar as this business
23 about pulling down her pants and licking her pussy with his
24 tongue?

25 A. Those are his exact words.

Det. Baran - People - Cross

1024

1 Q. He never told you that, did he?

2 A. Those are his exact words.

3 Q. And you were hoping because he didn't tell you
4 that, he would write an apology letter which he would admit
5 that he did that, correct?

6 A. No.

7 Q. What were you hoping he would do if he wrote an
8 apology that you wanted more evidence?

9 A. Admit on another document that he licked her pussy
10 or vagina.

11 Q. That didn't happen, did it?

12 A. I don't know.

13 Q. So you wanted another document to say that he
14 licked her vagina because you had not been satisfied with
15 what is People's 10 in evidence here?

16 MR. PERRI: Objection.

17 THE COURT: Sustained.

18 Q. So you wanted him to write a letter to Crystal and
19 Mya and you did it in Spanish, right?

20 A. Yes.

21 Q. Didn't you tell us Crystal and Mya don't read
22 Spanish?

23 A. I didn't tell you that. I don't know what
24 language --

25 Q. Did they ever speak to you in Spanish?

Det. Baran - People - Cross

1025

1 A. I don't know what language Crystal speaks or
2 reads.

3 Q. You had them write a letter in Spanish not knowing
4 whether or not they even read Spanish, correct?

5 A. No.

6 Q. No, what?

7 A. No, I didn't have him write a letter in Spanish.
8 I offered him a pen and pad to write a letter.

9 Q. Why not have him write it or you write it for him
10 in English, have him sign it and give it to Crystal and Mya
11 because they speak English; why didn't you do that?

12 A. Because it's stronger if he writes it in his own
13 hand straight than if I write it.

14 Q. Even if they can't read it?

15 A. I don't know that he can't read it.

16 MR. PERRI: Objection.

17 THE COURT: Overruled. He already answered.

18 Q. You don't know they could read it?

19 A. Well, Mya was six. I sincerely doubt she could
20 read English or Spanish.

21 Q. How about Crystal?

22 A. I don't know.

23 Q. She spoke to you in an English voice, correct?

24 A. Yes, but so did the defendant.

25 Q. I know. Equally, right? They were speaking

Det. Baran - People - Cross

1026

1 equally?

2 A. The defendant has a stronger accent. I don't know
3 what kind of accent Crystal has.

4 Q. She doesn't have an American accent.

5 A. I don't know what kind of accent it is, and her
6 name is Ramirez. I thought maybe she is Latino also.

7 Q. Based on her name, but you spoke to her, you say?

8 A. That's correct.

9 Q. You know she has an American accent, right?

10 A. I said, she has an accent. I can't identify what
11 kind of accent, whether it is a foreign accent or an accent
12 from Brooklyn or another part of the United States or
13 another country.

14 Q. Now, you said there are other -- there are parts
15 of Nassau County where it's equipped to interview people who
16 are arrested, correct?

17 A. Yes.

18 Q. So, you could have taken the defendant to one of
19 those places and interviewed him on an audio or video,
20 couldn't you?

21 A. They have to be available, they have to be manned,
22 and it's not my call to make that decision.

23 Q. If you wanted, did you ask anybody to do that?

24 A. When I briefed my supervisor it's his call whether
25 or not we're going to move the defendant and try to move him

Det. Baran - People - Cross

1027

1 to a place to videotape him.

2 Q. Did you ask anybody if you could do that?

3 A. Specifically, did I ask anybody?

4 Q. Yes.

5 A. No.

6 Q. Specifically, you didn't ask your supervisor?

7 A. Specifically, no.

8 Q. And that's because you didn't want whatever
9 interview you conducted with Mr. Ramos to be on video; isn't
10 that correct?

11 A. No, I preferred him being on video.

12 Q. Yes, so would I. So you never asked the
13 supervisor, anybody else, you never even called the
14 facilities where the equipment exists, did you?

15 A. I didn't, no.

16 Q. Did anybody?

17 A. I don't know. It's possible Detective Sergeant
18 M-A-T-E-R-D-E-R-O, made a call, but I'm not aware of it.

19 Q. You didn't even ask him to do that, did you?

20 A. I didn't specifically ask him.

21 Q. You didn't specifically ask anybody, did you?

22 A. It's either him or nobody.

23 Q. You didn't ask him, did you?

24 A. I didn't specifically ask him. When I briefed him
25 on the case, his responsibility was to make that

Det. Baran - People - Cross

1028

1 determination.

2 Q. You didn't ask to have him --

3 A. Yes. I said that. I didn't specifically ask him.
4 It's not exactly my call either.

5 Q. But if you had asked, maybe he would grant your
6 request?

7 MR. PERRI: Objection.

8 THE COURT: Sustained.

9 MR. BERGER: What was your ruling?

10 THE COURT: Sustained.

11 We're not going to get into speculation,
12 counselor.

13 Q. Detective, isn't it correct, that when you met Mya
14 at the hospital, you say you asked her what happened and she
15 said to you, he ate my coochie and that was the entire
16 conversation you had? You never asked her if this had
17 happened before, did you?

18 A. I asked her. That was not the entire
19 conversation.

20 Q. And what do you mean? You mean you asked her if
21 it had happened before?

22 A. No.

23 Q. You didn't ask her?

24 A. No.

25 Q. Didn't you testify here in direct examination, and

Det. Baran - People - Cross

1029

1 now on cross, that after she said he ate my coochie, that
2 asked her if this had ever happened before?

3 A. No.

4 Q. Did you testify that she told you or nodded her
5 head that this happened before?

6 A. Yes, but she didn't respond. I asked, the
7 conversation was, that I asked her what happened. She said,
8 Daniel ate my coochie. I said, has he ever done it before?
9 She nodded, and -- I'm sorry. He ate my coochie. Who?
10 Daniel or Danny. And I said, has he ever done it before?
11 She said, yes or nodded in an up and down motion, but I
12 didn't ask her what happened and did it happen before, in
13 that order. First I asked her who is the he that she
14 referred to.

15 Q. Let me ask you, you were under oath at a hearing
16 back in September?

17 A. Yes.

18 Q. Page 139, did you make the following answer to the
19 following question?

20 "QUESTION: At line question eight, you asked
21 her what happened, correct?

22 "ANSWER. Yes.

23 "QUESTION: Did she say to you, ate my
24 coochie?

25 "ANSWER: He ate my coochie.

Det. Baran - People - Cross

1030

1 "QUESTION: So she used the word he?

2 "ANSWER. Yes.

3 "QUESTION: And that was the entire
4 conversation that you can recall?

5 "ANSWER: That was the entire conversation."

6 Did you make those answers to those questions?

7 A. Yes.

8 Q. Were they true when you made them?

9 A. Yes.

10 Q. Is it true today?

11 A. It seems to me today I asked him who he is and she
12 said Daniel. I think I forgot about it at the time of the
13 hearing.

14 Q. Did you forget also asking her whether this
15 happened before?

16 MR. PERRI: Objection.

17 THE COURT: Sustained.

18 MR. PERRI: May we approach.

19 THE COURT: You may.

20 (Whereupon, there was a sidebar discussion
21 with the Court and counsel, as follows:)

22 MR. PERRI: Defense counsel is
23 misrepresenting the grand jury testimony. Although, in
24 application under those questions he did not include
25 the other section in another time when defense counsel

Det. Baran - People - Cross

1031

1 in the same questioning asked him about the
2 conversations, the witness responded by saying the
3 final part of the nodding and the questioning of that
4 it ever happened before.

5 THE COURT: You can handle as you see fight
6 on redirect of this witness.

7 MR. PERRI: That's fine.

8 MR. BERGER: May I make my point. It's
9 Hornbook Law, basic. You cannot bring in prior
10 inconsistent statements just because he made
11 inconsistent statement before.

12 THE COURT: You can when it mischaracterizes
13 the integrity of the testimony. That's my ruling. You
14 don't have to like it, counselor.

15 (Whereupon, the proceedings resumed.)

16 Q. Now, there were other parts. There were other
17 times where you made the statement that she nodded her head
18 as you did today, when you testified at the hearing; is that
19 correct?

20 A. I don't understand the question.

21 Q. During the time of the hearing, did you testify
22 that you asked her that question, if it happened before and
23 she nodded her head or not?

24 A. I believe so, yes.

25 Q. Well, then I asked you at a later time the part I

Det. Baran - People - Cross

1032

1 just read to you if that was the entire conversation and you
2 answered that it was the entire conversation, correct?

3 A. I answered just now, yes.

4 Q. So when I asked you those questions back at the
5 hearing, were you trying to think back as to what happened
6 back on October 16th of 2013, when I was asking you the
7 question in September of 2014, you were trying to think back
8 and do your best?

9 A. Correct.

10 Q. So, you said different things during the course of
11 that hearing on this issue as to whether or not that was the
12 entire conversation or whether or not you had asked her if
13 this happened before, correct?

14 A. I need to refresh my memory of the transcript. I
15 answered the question as you asked me to the best of my
16 recollection at that time.

17 Q. Let me ask if you made these answers to these
18 questions on 178 at line one.

19 "QUESTION: Drawing your attention back to
20 the hospital for a moment, I believe you told us last
21 week that you had asked Mya if this ever happened
22 before; do you remember testifying to that?

23 "ANSWER: Yes.

24 "QUESTION: What did she say?

25 "ANSWER: She indicated that it had.

Det. Baran - People - Cross

1033

1 "QUESTION: Well, what do you mean she
2 indicated? What did she say?

3 "ANSWER: I don't recall her words. She may
4 have nodded. She may have said yes. I don't recall.
5 Did you make those answers to those questions?"

6 THE WITNESS: Your Honor, I would feel
7 uncomfortable testifying without the document.

8 THE COURT: Would you like to see it to
9 refresh your recollection?

10 THE WITNESS: Yes.

11 THE COURT: Show it to the witness, please.

12 Q. Page 178 of the document.

13 A. What is the question?

14 Q. Did you read that?

15 A. Yes.

16 Q. Didn't I just read that accurately to you?

17 A. Yes.

18 Q. May I have it back, please.

19 Did you make those answers to those questions?

20 A. Yes, I did.

21 Q. And were they true?

22 A. Yes.

23 Q. So, which is it, did she say yes, did she nod?

24 A. At that point in September, I wasn't sure, but as
25 I was reading the transcript over in preparation for today,

Det. Baran - People - Cross

1034

1 I felt that that statement is no longer accurate, that she
2 did in fact nod and not say yes.

3 Q. Didn't we establish yesterday, detective, your
4 memory was better back in September than it was today?

5 A. In general.

6 Q. Now, as you reread the transcript, which says she
7 may have nodded, may have said yes, you are telling us now,
8 you are clearer she said that she nodded?

9 A. I am sorry, she nodded.

10 Q. That section I read to you before that I asked you
11 if that was the entire conversation in which you admitted
12 you said that and which omitted my question about whether it
13 ever happened before; is that true also?

14 A. Could I see the page that you are referring to?

15 Q. For the record, starting at approximately from the
16 top of page 139 of the hearing. Read it to yourself,
17 please.

18 A. I would want to turn back to page 138 since you
19 are referencing a previous --

20 Q. Fine. Turn back.

21 A. I'm sorry, what is the question?

22 Q. Have you read it?

23 A. Yes.

24 Q. So, when I read that to you before, that was
25 accurate; was it not? When I read the transcript to you

Det. Baran - People - Cross

1035

1 before, did I read it accurately?

2 A. Yes.

3 Q. When you said that the entire conversation, that
4 is you asked her who ate her coochie and Danny, and that was
5 it, no mention about asking her if it happened before, that
6 was the entire conversation at least at that part of the
7 transcript, correct?

8 A. Yes.

9 Q. And so I asked you before if that was true when
10 you said it?

11 A. Well, I'm sorry, if what was true, that there was
12 no other conversation?

13 Q. Yes.

14 A. That was inaccurate.

15 Q. Did you read the transcript before testifying for
16 this trial?

17 A. Yes.

18 Q. Did you tell anybody, Mr. Perri or anybody else,
19 that you had testified inaccurately on that point?

20 A. No.

21 MR. PERRI: Objection.

22 THE COURT: Sustained.

23 MR. BERGER: That is sustained, Judge?

24 THE COURT: Yes, it is.

25 MR. BERGER: I have nothing further.

Det. Baran - People - Redirect

1036

1 THE COURT: Redirect, People?

2 MR. PERRI: Yes, your Honor.

3 REDIRECT EXAMINATION

4 MR. PERRI:

5 Q. Good morning, detective.

6 A. Good morning.

7 Q. Do you recall just immediately prior to my
8 standing up when defense counsel directed your attention to
9 page 138 and 139, more specifically, he directed your
10 attention to page 139 of the hearing transcript; do you
11 recall that?

12 A. Yes.

13 Q. I'm going to ask you to direct your attention to a
14 little bit before that, I'll ask if you recall being given
15 questions by defense counsel by Mr. Berger at the hearing
16 and giving these answers?

17 MR. BERGER: I object. May we come up?

18 (Whereupon, there was a sidebar discussion
19 with the Court and counsel, as follows:)

20 MR. BERGER: I gave him the transcripts to
21 read.

22 MR. PERRI: I referenced the page after and
23 didn't go back to where the witness, when asked by
24 defense counsel, 138, line two. And did you have a
25 conversation with Mya, answer, yes. And what did she

Det. Baran - People - Redirect

1037

1 say to you and what did you say to her? Answer, I
2 said, what happened today. I said, Danny ate my
3 coochie. And I said, who? She said, Danny. And so I
4 asked her, has it ever happened before, and she said,
5 yes. Then I said okay, we'll talk later.

6 THE COURT: What is the objection to this?

7 MR. BERGER: I gave him this to read. He
8 read back --

9 THE COURT: It doesn't -- you gave it to him
10 to read.

11 MR. BERGER: He already elicited the fact he
12 said at the other times that he had first nodded at one
13 point, yes at another point, and then when I asked him
14 if that was the entire conversation, he said, yes, it
15 was.

16 THE COURT: My ruling is this: You have
17 asked the questions in attack of his credibility, which
18 you are allowed to do, and it is perfectly proper on
19 redirect. It's perfectly proper for the People to now
20 bring out that which shows here the statement in
21 context, or a clarity of the situation as it goes
22 towards credibility, so I will allow it.

23 MR. BERGER: If you take a look at the
24 context, what I read to him was not out of context to
25 page 139. I'm not disputing the fact that he made

Det. Baran - People - Redirect

1038

1 other statements.

2 THE COURT: Fair enough. I understand.

3 MR. BERGER: I'm not taking anything out of
4 context when I'm quoting page 139. That's the question
5 asked. I asked him what the conversation was. He said
6 that was the entire conversation.

7 THE COURT: I understand your position. You
8 have my ruling. You may continue.

9 (Whereupon, the proceedings resumed.)

10 Q. Detective, again, on the page immediately prior to
11 that selected by defense counsel, do you recall giving these
12 questions by defense at the hearing and giving these
13 answers? Page 138.

14 "QUESTION: Did you have a conversation with
15 Mya?

16 "ANSWER: Yes.

17 "QUESTION: And what did she say to you and
18 what did you say to her?

19 "ANSWER: I said what happened today and she
20 said, Danny, ate my coochie, or she said he ate my
21 coochie, and I said, who? And she said, Danny. And so
22 I asked her, has this ever happened before and she
23 said, yes. And I said, okay, we'll talk later."

24 Detective, do you recall giving those answers
25 to those questions at the hearing?

Det. Baran - People - Redirect

1039

1 A. Yes.

2 Q. Detective, on cross-examination, you testified
3 about meeting Mya or meeting Mya and Crystal at Nassau
4 University Medical Center; had you ever met them before that
5 day?

6 A. No, I had not.

7 Q. And, detective, Mr. Berger pointed out that when
8 you testified, that Mya indicated or reported to you that
9 the defendant molested her on prior occasions, you had to
10 interpret her head movements; could you describe how Mya
11 moved her head that day?

12 A. She moved her head up and down.

13 Q. What did you take that to mean?

14 A. I took it as a yes.

15 Q. Detective, defense counsel asked you about the
16 special victims squad protocol related to interviewing Mya.
17 Did you ask Crystal, Mya's mother, to be interviewed on a
18 video on October 16, 2013?

19 A. Yes, I did.

20 Q. Why wasn't Mya --

21 THE COURT: Finish the question.

22 Q. Why wasn't Mya put on video or interviewed further
23 at the special victims squad on October 16, 2013?

24 THE COURT: You have an objection to that,
25 counselor?

Det. Baran - People - Redirect

1040

1 MR. BERGER: No.

2 THE COURT: Because by the --

3 A. Because by the time she finished with her medical
4 examination, it was eleven o'clock at night and her mother
5 begged me not to bring Mya, who was sick at the time, to
6 Bethpage to conduct a video interview that would probably
7 last perhaps until one, two in the morning.

8 Q. Defense counsel also asked you on
9 cross-examination whether obtaining more specific details
10 about prior occasions of abuse would have effected the
11 charges. Detective, did not having that information detract
12 in any way, about an earlier alleged incident, detract in
13 any way from the charges and crimes that you charged against
14 the defendant for October 16, 2013?

15 MR. BERGER: Objection.

16 THE COURT: If you know.

17 A. I'm sorry. You are you asking if the charge was
18 charged on October 16th would have been amended if I had
19 more information?

20 Q. Would anything had been taken away from charging
21 that crime?

22 A. No additional charges would have been added.

23 Q. And, detective, according to the protocol and the
24 rules of the Nassau County Police Department, were you
25 permitted to bring in outside video equipment to the arrest

Det. Baran - People - Redirect

1041

1 room?

2 A. No.

3 Q. And?

4 A. I'm sorry, I didn't answer that. I thought
5 Mr. Berger was objecting.

6 Absolutely not. It's specifically prohibited.

7 Q. Defense counsel asked you about why the defendant
8 was not interviewed at the safe center. Could you describe
9 what the safe center is?

10 A. The safe center, first of all, we are located in
11 our building which had been formally occupied by Grumman.
12 We're on the Grumman Campus. There are several buildings
13 that still remain there. Being at the police department,
14 child protective services, the coalition against child abuse
15 and child abuse against domestic violence, and their
16 satellite groups that deal with human trafficking and
17 counseling were allocated at one building, it's a U shape
18 building. We have one end of the U and when we bring in
19 victims, they can certainly -- are able to move within the
20 building itself to seek services from either domestic
21 violence or coalition against child abuse. It is absolutely
22 prohibited as per memorandum of the agreement between the
23 commissioner of the police and director of the safe center
24 that nobody who is a suspect and certainly not a defendant
25 under arrest is allowed past the police department facility

Det. Baran - People - Redirect

1042

1 into the safe center where the videotaping equipment had
2 been located at that time.

3 Q. And the videotaping equipment in the safe center
4 portion of that building, what is that set up for?

5 A. That's set up for interviewing with the kid,
6 friendly room with lots of stuffed animals, color pictures
7 and crayons and color books.

8 Q. Is there a handcuff restraint in that room?

9 A. No, there is not.

10 Q. Defense counsel asked you several times about not
11 telling the defendant the charges he was facing prior to
12 interviewing him; is it fair to say he did this to make sure
13 your interview wasn't suggestive?

14 MR. BERGER: Objection.

15 THE COURT: Sustained as to form.

16 MR. BERGER: How come leading? How about
17 giving the answer, Judge. It's clearly leading.

18 THE COURT: All right, remember nothing what
19 the attorneys say is evidence, and I'm up here making
20 the legal rulings, so sustained as to the form. You
21 may rephrase the question.

22 Q. Why didn't you inform the defendant of what he was
23 charged with prior to interviewing the defendant?

24 MR. PERRI: Objection.

25 THE COURT: Overruled.

Det. Baran - People - Redirect

1043

1 A. He didn't ask me and that is always significant in
2 my experience when people feel they did nothing wrong, they
3 it didn't legally. Why am I being arrested? Why am I? And
4 he didn't do that. I was waiting to see if he did do that,
5 first of all. He never asked me, so I didn't volunteer the
6 information.

7 Secondly, I found that telling people what they're
8 charged with can sometimes have a shutdown effect on them.
9 They decide what they did is, in fact, much more serious
10 than they thought it was, and I don't want to encourage that
11 shutdown if she was talking freely and voluntarily.

12 Q. Defense counsel asked you also several questions
13 about to what degree the statement that is People's 10, was
14 verbatim. Where did all of the facts contained in People's
15 10 come from?

16 A. From the defendant.

17 Q. Did you add any other additional information or
18 facts to that statement?

19 A. No, I would not have had those facts to add.

20 Q. Defense counsel also asked you whether or not the
21 defendant initialed the actual sentence where he admitted to
22 tickling, in his words, Mya's pussy with his mouth. Did you
23 have the defendant initial every sentence in that statement?

24 A. No, I did not.

25 Q. When did you have the defendant initial the

Det. Baran - People - Redirect

1044

1 statement?

2 A. When he read over the statement that either he
3 noticed a mistake or I noticed a mistake because I was
4 reading the statement over again on the monitor while he was
5 reading it to himself.

6 Q. Did the defendant sign the page where the
7 statement that he had tickled Mya's pussy with his mouth
8 appears?

9 A. Yes. I have him sign the bottom so nothing could
10 be added afterwards or adjusted.

11 Q. In 2013, were the two other locations at the
12 Nassau County Police Department had, for interviewing
13 defendants and suspects, were they located on Grumman
14 Campus?

15 A. No, they were not.

16 Q. Where were those two locations?

17 A. One was in headquarters homicide squad, which
18 works until midnight, and the other was at the robbery squad
19 which is in Bellmore, and I believe they also work until
20 midnight.

21 Q. Where is police headquarters?

22 A. Police headquarters is 1490 Franklin Avenue in
23 Mineola.

24 MR. PERRI: Nothing further.

25 THE COURT: Thank you.

Det. Baran - People - Redirect

1045

1 RECROSS-EXAMINATION

2 BY MR. BERGER:

3 Q. You said that the reason you didn't interview Mya
4 was on video was because it was late at night and the mother
5 asked you and you figured it was late and in the early
6 morning hours?

7 A. I didn't.

8 Q. Did you tell us the reason you didn't interview
9 her on the video was because the mother asked you to let her
10 go home, it was late at night?

11 A. I think she begged me. She begged me not to bring
12 Mya back to Bethpage to conduct an interview, it would take
13 some time.

14 Q. Is part of the procedure to interview children,
15 isn't it?

16 A. Under normal conditions, yes.

17 Q. How about the next day?

18 A. The next day we had discussed it, and I believe I
19 contacted the DA's office and was advised to hold off on
20 that.

21 Q. Who in the DA's office advised you not to
22 interview her?

23 MR. PERRI: Objection.

24 THE COURT: Overruled.

25 A. I don't remember who I spoke to. I'm sorry.

kmm

Det. Baran - People - Redirect

1046

1 Q. You had it written down somewhere?

2 A. No, I don't.

3 Q. Is it at any time part of protocol to interview
4 the child on video?

5 A. After the arrest is made, the investigation at
6 that point are protocol to be directed by the DA's office.

7 Q. Really. You intended to interview that night,
8 didn't you?

9 A. Yeah, I did.

10 Q. That's part of the procedures, isn't it?

11 A. Yes.

12 Q. Part of the protocol you talked about?

13 A. Yes, under normal circumstances.

14 Q. What is not normal, there's another day?

15 MR. PERRI: Objection.

16 THE COURT: Sustained as to form.

17 Q. There's another day to do it, correct?

18 A. Under the direction of the DA's office, yes.

19 Q. You are telling me the DA's directed you not to
20 interview her on videotape?

21 A. I'm telling you two things at first. We don't
22 continue the investigations after an arrest is made unless
23 directed by the DA's office. And second one, I made the
24 call the next day and was advised to hold off a little bit.

25 Q. Detective, you always continue investigation after

Det. Baran - People - Redirect

1047

1 an arrest is made, don't you, isn't that part of police
2 work?

3 A. No.

4 Q. It's not? If you had additional evidence
5 involving this case, wouldn't you pursue it?

6 A. If I had additional evidence, I would try to
7 pursue that before making the arrest.

8 Q. You mean after you made the arrest, you don't
9 pursue additional evidence?

10 A. Unless directed by the DA's office.

11 Q. If the DA's office doesn't direct you to continue
12 investigation, you don't?

13 A. Generally, no.

14 Q. This is part of the police directives?

15 MR. PERRI: Objection.

16 THE COURT: Sustained as to form.

17 Q. That's part of your understanding of what your
18 police duties are?

19 A. That's what I was taught, yes.

20 Q. I'm sorry?

21 A. Yes. That's what I was taught.

22 Q. And you are claiming that somebody in the police
23 department was in the DA's office, told you not to pursue
24 the video of Mya?

25 A. That's my general recollection.

Det. Baran - People - Redirect

1048

1 Q. That's your general recollection. Do you have a
2 specific recollection of that?

3 A. No.

4 Q. Because that didn't happen, did it, detective?

5 A. It happened.

6 Q. You are the carrying detective in this case, you
7 are supposed to take notes when things happen, involved with
8 the case, aren't you?

9 A. No.

10 Q. Does that help you refresh your recollection?

11 MR. PERRI: Objection.

12 THE COURT: Overruled.

13 A. Well, if I was knew I was going to a trial a
14 year-and-a-half later, I probably would have. But at the
15 time of the arrest, and arrest processing, I didn't need
16 notes because it was very clear in my head.

17 Q. It was clear in your head what?

18 A. What Mya said to me in terms of her short comment
19 in the hospital, what the defendant had said to me in the
20 statement and when the officers said to me when we made the
21 arrest.

22 Q. It was clear to you, what, you were not going to
23 trial?

24 A. A good case for criminal sexual act in the first
25 degree.

Det. Baran - People - Redirect

1049

1 Q. You are not a jury, you don't determine those
2 things, right?

3 A. Yes.

4 Q. So, you have many, many cases, don't you?

5 A. Yes.

6 Q. You write things down that happen for the various
7 cases so you could remember what you did with each case,
8 right?

9 A. No, not always.

10 Q. No, you keep it stored in your memory?

11 A. Yes.

12 Q. Your memory which was faulty, from what you said,
13 but don't remember specifically from what happened nine
14 months ago in September, and even in September when you
15 testified your memory wasn't that good also, correct?

16 A. That's not true. I think you were splitting hairs
17 in terms of minor details after asking the same question
18 five or six times and getting a smaller, a slightly
19 different response, but I think otherwise my memory was
20 pretty good.

21 Q. Didn't you acknowledge yesterday your memory
22 wasn't as good today as it was from last September?

23 A. That's normal. I would expect my memory to be
24 weaker nine months later.

25 Q. Wouldn't you expect your memory to fade as times

kmm

Det. Baran - People - Redirect

1050

1 goes on?

2 A. Yes.

3 Q. Wouldn't it be helpful that you write notes down
4 as to what happened so you could refer to it so you know you
5 made a note contemporaneously with when it happened?

6 A. In hindsight it would have been.

7 Q. How many years are you a detective?

8 A. 19.

9 Q. Now, you are discovering 19 years later in
10 hindsight it would have been good?

11 MR. PERRI: Objection.

12 THE COURT: Sustained as to form.

13 Q. You are now realizing for the first time in
14 hindsight it would have been better to takes notes about
15 what happened?

16 A. No.

17 Q. No, what?

18 A. No, I'm not realizing for the first time.

19 Q. I just said in hindsight, it would have been?

20 A. In this particular case, since the question was
21 whether she nodded, or said Danny or he, in hindsight, it
22 would have been better to have written that down. I didn't
23 think it was important at the time, and I don't think it's
24 important right now what she said, he licked my coochie or
25 Danny licked my coochie.

Det. Baran - People - Redirect

1051

1 Q. And you didn't think it was important to ask
2 follow-up questions whether it happened before to other
3 children or to this child, right?

4 A. Is that a question?

5 Q. That's a question.

6 A. Not regarding other children at that time, but I,
7 should have asked him how many times he did it.

8 Q. If it happened to other children, don't you think
9 those parents should be told about that?

10 MR. PERRI: Objection.

11 THE COURT: Sustained.

12 Q. Now, if Mr. Perri asked you about if you had
13 further questions with respect to other instances, there
14 would be additional charges, correct? You know that?

15 A. If they could be substantiated and corroborated.

16 Q. Yeah. So first you find out about them and it was
17 a perfect source except for the defendant, to find out if he
18 had done this before, right, detective?

19 MR. PERRI: Objection.

20 THE COURT: Sustained.

21 MR. BERGER: I didn't hear you.

22 THE COURT: Sustained. I thought you heard
23 me.

24 Q. So, detective, let me understand. When you
25 investigate somebody, and you are interviewing them, you

Det. Baran - People - Redirect

1052

1 don't bother to ask them if they engaged in this behavior
2 before, whether it was a robbery case or sex case, you don't
3 ask them about that?

4 A. I do if the victim of a sex case articulated that
5 it happened before and provides dates and times and
6 something for me to go on.

7 Q. A six-year old is going to do that for you?

8 A. No.

9 MR. PERRI: Objection.

10 THE COURT: Overruled. He answered.

11 Q. If the six-year old can't do it for you, isn't it
12 better to get it from the defendant?

13 MR. PERRI: Objection.

14 THE COURT: Sustained.

15 Q. If there were additional charges, wouldn't you as
16 a detective be expected to obtain them and make the charges?

17 MR. PERRI: Objection.

18 THE COURT: Sustained.

19 MR. BERGER: Mr. Perri asked this on
20 redirect, Judge, about additional charges. He gave an
21 answer.

22 THE COURT: Approach, please.

23 (Whereupon, there was a sidebar discussion
24 with the Court and counsel, as follows:)

25 THE COURT: All right, so I have specific

Det. Baran - People - Redirect

1053

1 question from Mr. Perri related to whether or not if he
2 had had additional information, would it have detracted
3 from this particular charge. The answer was no. There
4 would have been additional charges added. That was in
5 response to an extensive cross regarding this
6 speculation of other charges and other crimes that I
7 don't know if counsel is trying to say did occur or
8 didn't occur. The bottom line is, I've allowed enough
9 cross and re-cross regarding speculative actions. They
10 play no part in this particular criminal action that we
11 are trying. It has been explored in this Court's
12 opinion to a reasonable and sufficient degree, and I
13 will no longer take any questions on speculative
14 charges that could have, should have, or would have
15 been added if other information could have, should
16 have, or would have been known. You are going to try
17 the charges that are before the Court.

18 MR. PERRI: Yes, your Honor.

19 MR. BERGER: Are you seriously suggesting I
20 can't challenge the way in which this detective did his
21 job this day, and that if he --

22 MR. PERRI: I ask defense counsel to lower
23 his voice. I ask the jury be excused.

24 THE COURT: Whisper a bit.

25 MR. BERGER: I'm not trying to -- are you

Det. Baran - People - Redirect

1054

1 suggesting that I couldn't challenge this detective on
2 the way he did his job in this particular case, and if
3 he could have obtained additional charges, he was not
4 remiss if he failed to do that.

5 THE COURT: Counselor, I have allowed you to
6 question this witness with regards to how he conducted
7 his investigation to quite an extent, and, in fact, you
8 have gotten extensive answers with regards to that.
9 No, it is not my belief that I have to allow you to ask
10 questions about other charges. We're not trying other
11 charges. We're trying this charge. There is no place
12 any further to discuss continued speculation. You have
13 developed that line of questioning. You have been
14 allowed to develop that line of questioning. I have
15 now said it is -- it is enough. We have gone far
16 afield enough, and now we're going to stick to the
17 charges that are before the Court.

18 MR. BERGER: I'm sticking to the charges. If
19 the detective doesn't do his job properly, that is
20 something for the jury to consider, and I'm asking
21 questions that relate to this particular case, this
22 particular interview of the defendant, and it seems to
23 me that if I can show that efforts fell short, I should
24 be able to establish that.

25 THE COURT: I have stated that I have allowed

Det. Baran - People - Redirect

1055

1 you to do that, whether or not you are going to
2 continue to do that, I don't have to allow it. You
3 continue to ask the same series of questions over and
4 over again. You have asked them. You have been given
5 an opportunity to develop that portion of your
6 cross-examination for whatever reason you see it to be
7 fit to develop that line of questioning. I don't have
8 to allow it to continue ad nauseam. We're not going
9 down a speculative road any further.

10 MR. BERGER: Mr. Perri asked whether or the
11 not additional charges would have detracted from the
12 present charge.

13 THE COURT: No, he asked based on your
14 extensive cross in this area. Again, an area that I
15 probably should have shut down immediately because it's
16 purely speculative. He asked one question whether it
17 would have impacted this charge. I then allowed you to
18 ask additional questions about it.

19 Here's my ruling: You are not asking anymore
20 questions. Note your exception for the record. Move
21 on.

22 MR. BERGER: I want to place on the record
23 something else.

24 THE COURT: Go ahead.

25 MR. BERGER: I asked the Court to sign a

Det. Baran - People - Redirect

1056

1 subpoena duces tecum to have the police procedures with
2 respect to the sex offense cases honored. The Court
3 refused to sign the subpoena, yet the Court allows this
4 detective to give us speculative, non-verifiable
5 answers as to what happens with procedures. You
6 absolutely cut off my legs in effort to discredit this
7 kind of testimony. You allowed the prosecutor to ask
8 this witness, give speculative answers as to why he
9 would do this, and why he would testify about what the
10 procedures are. I don't know what they are. You
11 didn't allow me to get ahold of them. You refused to
12 sign that subpoena. I'm putting that on the record.

13 THE COURT: I believe the questions by the DA
14 were on redirect and not on direct. It was proper
15 redirect based on cross-examination, but your exception
16 to my ruling is noted for the record.

17 (Whereupon, the proceedings resumed.)

18 RECROSS EXAMINATION

19 BY MR. BERGER: (Continuing)

20 Q. What protocol and where did they exist that says
21 you cannot bring in a tape recorder or a hand held video
22 camera to interview the defendant?

23 MR. PERRI: Objection.

24 THE COURT: Overruled.

25 A. I don't know that protocols are in writing.

Det. Baran - People - Redirect

1057

1 That's what we were taught in various classes, refresher
2 courses.

3 Q. If it's not in writing, anybody can say that, give
4 that as an answer, right?

5 MR. PERRI: Objection.

6 THE COURT: You can answer. It's overruled.

7 A. I got that information from my bosses, but I was
8 told that everything used in the police department has to be
9 anything used to, for instance, an electronic equipment or
10 machinery has to be requisitioned through the police
11 department?

12 Q. You claim he made this statement --

13 MR. PERRI: Objection.

14 THE COURT: I haven't heard a question yet.

15 Q. You claim he made this statement, correct,
16 People's 10, you are claiming that the defendant made that
17 statement?

18 MR. PERRI: Objection. Beyond the scope.

19 MR. BERGER: I'm laying a foundation.

20 Q. You claim he made this statement to you about
21 pulling down her pants and tickling her?

22 A. Yes, he did.

23 Q. Right.

24 A. Yes.

25 Q. What better evidence if you have it on video,

Det. Baran - People - Redirect

1058

1 right?

2 MR. PERRI: Objection.

3 THE COURT: Overruled.

4 A. Agreed.

5 Q. So you made no effort to even attempt to get it on
6 video, did you?

7 A. I think no effort saying I made no effort is a
8 mischaracterization. There was nothing available to me at
9 the time, and after I briefed my boss the way the chain of
10 command works, it's his decision to call around. I'm not
11 finished. It's his decision to call around various other
12 commands, or the DA's office to see about the availability
13 of other equipment.

14 Q. Didn't you tell me you didn't ask your supervisor
15 before, didn't you tell me?

16 A. I did not ask him, right.

17 Q. I'm sorry?

18 A. I did not ask him, that's correct.

19 THE COURT: I hate to do this to you. I have
20 the jury sitting about hour and ten minutes. I don't
21 want to cut you off unnecessarily and cut your recross
22 short. I'm going to give all of you that break I
23 promised. We all got about an hours worth of work.
24 Stretch your legs. Don't talk about the case. Don't
25 get on your phones. Thank you.

Det. Baran - People - Redirect

1059

1 Be careful stepping down.

2 (Whereupon, the jury exited the courtroom.)

3 (Whereupon, a short recess was taken.)

4 THE CLERK: Case on trial continues,
5 Indictment Number 742N of 2014, People of the State of
6 New York vs. Daniel Ramos.

7 Let the record reflect all parties are
8 present. The jury is not present at this time.

9 Are the People ready?

10 MR. PERRI: Yes, your Honor.

11 THE CLERK: Defense counsel?

12 MR. BERGER: I am. I have an application.

13 THE COURT: Go ahead.

14 MR. BERGER: Before this trial began, I
15 served upon the Court, subpoena duces tecum asking the
16 protocol with respect to the sex crimes unit. I
17 thought it was relevant. I was quite right the
18 detective now has now mentioned the protocol, some of
19 which I think he made out of whole cloth. I should
20 have been provided with that. The Court refused to
21 sign my subpoena, why, I don't know. And I'm now
22 renewing my application for that subpoena duces tecum
23 to be honored.

24 THE COURT: Do you want to be heard?

25 MR. PERRI: The only reason it was brought up

Det. Baran - People - Redirect

1060

1 in this case is because defense counsel asked questions
2 about it on cross-examination. Just because he brings
3 that up doesn't provide a proper basis for the Court to
4 reconsider its previous ruling that they were not
5 discoverable or the proper subject of a subpoena.

6 MR. BERGER: Except the prosecution asked on
7 redirect questions about protocol and try to rebut the
8 cross-examination by using that, so he doesn't have
9 unclean hands. And the fact of the matter is, how
10 could it not be relevant? How could you not provide
11 defense counsel with protocols where I'm left in the
12 dark, and I don't know what they are, but this
13 detective can come up on the witness stand and make
14 them up and I can't challenge him on it. We know this
15 detective made up things on the witness stand or has
16 already agreed to things he said under oath weren't
17 true. You heard the equivocation. I do not put it
18 past this detective who made up the protocol, and at
19 the very least, defense counsel should have it.

20 THE COURT: Your application is denied.
21 Anything else before for the record before I re-seat
22 the witness?

23 MR. PERRI: No, your Honor.

24 MR. BERGER: No, your Honor.

25 (Whereupon, the jury entered the courtroom.)

Det. Baran - People - Redirect

1061

1 THE CLERK: Do both sides stipulate all sworn
2 jurors are present.

3 MR. PERRI: Yes, your Honor.

4 MR. BERGER: Yes, your Honor.

5 THE CLERK: Detective, you are reminded you
6 are still under oath.

7 THE COURT: You may continue.

8 CROSS-EXAMINATION

9 BY MR. BERGER: (Continuing)

10 Q. Was it your testimony a few moments ago that once
11 there is an arrest, you call up the DA's office to see how
12 you should proceed?

13 A. No.

14 MR. PERRI: Objection.

15 Q. So, you told us that you called the DA's office
16 the following day and they told you not to put the girl on a
17 videotape interview?

18 A. They said hold off.

19 Q. Who was it?

20 A. I don't remember.

21 Q. You have to answer for the record.

22 A. I don't remember.

23 Q. Was it somebody in the sex crimes unit?

24 A. Yes.

25 Q. Was it a supervisor?

Det. Baran - People - Redirect

1062

1 A. I don't remember.

2 Q. You mean you would have asked somebody who wasn't
3 a supervisor if you should proceed with an interview?

4 A. Yes.

5 Q. Even if it wasn't the supervisor, you would have
6 gotten the answer, right?

7 MR. PERRI: Objection.

8 THE COURT: Overruled. You can answer.

9 A. I would have asked them, and whatever answer they
10 gave me, I would have been guided by it.

11 Q. Is that what you do in every case, you make an
12 arrest, you call up the district attorney's office the next
13 day and ask her how to proceed?

14 MR. PERRI: Objection.

15 THE COURT: Sustained.

16 Q. Is that what you did in this case?

17 A. That's what I did in this case because it was such
18 a missing part to the investigation.

19 Q. Such a missing part?

20 A. Yes.

21 Q. What does that mean, it was a missing part?

22 A. It's important to interview the victim of a sex
23 crime, normally before you make an arrest. In this case the
24 uniformed officers made a summary arrest, and the fact that
25 I did not have a videotaped interview from the victim, I

Det. Baran - People - Redirect

1063

1 thought it was important enough to call the DA's office and
2 ask them if they thought I should continue or let them
3 handle the interview from that point on.

4 Q. You have conducted interviews of child victims,
5 haven't you, in the sex crimes unit?

6 A. Yes.

7 Q. Even after an arrest or before an arrest, correct?

8 A. Usually before an arrest.

9 Q. You have done it after an arrest too?

10 A. Yes.

11 Q. Nobody stopped you from doing that, did they?

12 A. No, but it's never happened that an interview did
13 not take place on the same day as an arrest.

14 Q. Really, the fact that there is a day difference
15 makes all of the difference in the world to you?

16 A. Yes, it does.

17 Q. Why does that day make a difference?

18 A. Because he had already been arraigned or most
19 likely he would have been arraigned.

20 Q. He hadn't been arraigned? He hadn't been
21 arraigned?

22 MR. PERRI: Objection.

23 THE COURT: Sustained.

24 Q. Do you know that he hadn't been arraigned?

25 A. I didn't say whether he had been arraigned.

Det. Baran - People - Redirect

1064

1 Q. Do you know whether he was arraigned that night?

2 A. I know he was arraigned on the 17th.

3 Q. Do you know that that is the difference as to
4 whether or not you interviewed the girl?

5 MR. PERRI: Objection.

6 THE COURT: Overruled.

7 You may answer.

8 A. I decided to let the district attorney's office
9 make that decision because he had been to arraignments
10 already, or would have been to arraignments by the time I
11 interviewed her.

12 Q. Now, the protocols you talked about didn't prevent
13 you from taking the defendant to another place in Nassau
14 County for an interview, did it?

15 MR. PERRI: Objection, beyond the scope.

16 THE COURT: Sustained.

17 MR. BERGER: This is what was testified to on
18 redirect, Judge.

19 THE COURT: I'll let you ask the question one
20 more time. We'll get another series of answers and
21 then we'll move on. Go ahead.

22 Q. You made a claim before that you were not allowed
23 to conduct an interview in a safe center, correct?

24 A. With the defendant.

25 Q. This was what time at night that you were

Det. Baran - People - Redirect

1065

1 interviewing him?

2 A. It would have been 11:45 at night.

3 Q. Were there any other sex crime victims in that
4 safe center at that time?

5 A. Nope.

6 Q. So the video equipment was there for the use, was
7 it?

8 A. Yes.

9 Q. So, you didn't bother to attempt -- by the way,
10 you said there were two other places in Nassau County that
11 had the equipment for the interviews, correct?

12 A. Yes.

13 Q. Police headquarters, they're open all night,
14 aren't they?

15 A. Not the homicide squad.

16 Q. Police headquarters is open all night, isn't it?

17 A. The building is open, one of the offices is not.
18 I didn't -- when I say, the office, I mean the office where
19 the interview room for the prisoner that has the videotape
20 is located.

21 Q. And you couldn't get permission to use it?

22 A. We have been denied in the past, and I didn't ask
23 permission.

24 Q. How about trying this night?

25 A. I did not personally try.

kmm

Det. Baran - People - Redirect

1066

1 Q. No, you didn't. How about the one in Bellmore
2 where the robbery squad is?

3 A. It's the same thing, I didn't personally try it.

4 Q. You didn't make an effort to do it?

5 A. No.

6 Q. And you said I don't bother telling suspects
7 sometimes the charges because they might clam up; do you
8 remember saying something like that?

9 A. No, I didn't use the word bother, and I believe I
10 said sometimes they shut down.

11 Q. They shut down?

12 A. In the conversation, but I never said the word
13 bother.

14 Q. You are attempting to get a statement from him,
15 right?

16 A. Yes.

17 Q. And you are concerned if you tell him what he is
18 charged with, maybe he will not answer your questions?

19 A. That was secondarily, the fact -- I was also
20 awaiting to see if he would ask me, or if he knew already
21 what he had done wrong.

22 Q. Do you think he knows the Penal Law?

23 MR. PERRI: Objection.

24 THE COURT: Sustained.

25 Q. You were waiting for him to ask you, you said,

Det. Baran - People - Redirect

1067

1 right?

2 A. Yes.

3 Q. Do you think he knows the Penal Law to ask you?

4 MR. PERRI: Objection.

5 THE COURT: Sustained.

6 Q. So aren't you concerned if you tell him the
7 charges, he may not talk to you?

8 A. I really don't know whether he would or wouldn't.

9 Q. That's right I know that.

10 MR. PERRI: May the witness answer, your
11 Honor.

12 THE COURT: The witness may continue to
13 answer.

14 A. I don't know whether I would or wouldn't, but it's
15 significant to us what his behavior is at the time of the
16 arrest.

17 Q. What is his behavior? What does that mean,
18 detective?

19 A. It means whether or not he is incredulous that he
20 was arrested, and he didn't do anything wrong.

21 Q. If he tells you he didn't do anything wrong, isn't
22 that okay?

23 A. That's significant.

24 Q. Because you are supposed to advise him he has the
25 right to an attorney, right?

Det. Baran - People - Redirect

1068

1 MR. PERRI: Objection.

2 THE COURT: We're a little far afield. I'll
3 allow the answer to that question and then we'll move
4 on. He was advised he was allowed access to an
5 attorney.

6 Q. That's what you say because Pacheco read in
7 Spanish?

8 MR. PERRI: Objection.

9 THE COURT: Sustained.

10 Q. You don't know he was advised of that, do you,
11 detective?

12 THE COURT: Sustained.

13 MR. BERGER: I didn't hear an objection,
14 Judge.

15 THE COURT: Now it's my turn to step in
16 because we're on the second round of cross, now we're
17 going to follow the Court's rules.

18 Sustained. Next question.

19 Q. Didn't you want to be fair to him, detective?

20 MR. PERRI: Objection.

21 THE COURT: Overruled.

22 A. I don't understand, how you mean fair.

23 Q. Well, aren't you looking for a voluntary
24 statement?

25 MR. PERRI: Objection.

Det. Baran - People - Redirect

1069

1 THE COURT: Sustained. We're far afield now,
2 counselor.

3 Q. You said you didn't want him to shut down; do you
4 remember saying that?

5 A. Yes, I did.

6 Q. Which means you wanted to get a statement from
7 him, right?

8 A. I wanted to. Yes, I want to keep talking to him
9 and keep the lines of communication open to ultimately get a
10 statement.

11 Q. You want, what you consider, evidence from your
12 perspective, right?

13 A. That's correct.

14 Q. But you also wanted to give a willing, intelligent
15 voluntary statement, correct?

16 MR. PERRI: Objection.

17 THE COURT: Sustained.

18 Q. Was it a willing, intelligent, and voluntary
19 statement?

20 MR. PERRI: Objection.

21 THE COURT: Sustained.

22 Q. You were concerned that the defendant might say to
23 you, if you told him the charges that they're not true?

24 A. No.

25 Q. You are not at all --

Det. Baran - People - Redirect

1070

1 A. No, I wasn't concerned about that.

2 Q. If he said, they weren't from you, maybe he
3 wouldn't give a statement, right?

4 MR. PERRI: Objection.

5 THE COURT: If you understand it. You can
6 answer it.

7 A. I don't feel comfortable trying to speculate what
8 the defendant may or may not have been thinking after he
9 would say something to him.

10 Q. You questioned people before, correct?

11 A. Correct.

12 Q. Sometimes they tell you they didn't do it,
13 sometimes they tell you they did?

14 MR. PERRI: Objection.

15 THE COURT: Sustained.

16 Q. You wanted to get a voluntary statement from him;
17 isn't that right, detective?

18 MR. PERRI: Objection.

19 THE COURT: Sustained.

20 Q. You don't know what the defendant read with
21 respect to People's 10; isn't that correct?

22 MR. PERRI: Objection.

23 THE COURT: Sustained.

24 MR. BERGER: This was asked on redirect. He
25 claimed he read the statement.

Det. Baran - People - Redirect

1071

1 MR. PERRI: No, you were --

2 MR. BERGER: Look at the transcript.

3 THE COURT: I'll look at my notes, counselor,
4 but thank you for the suggestion.

5 Ask your question again with regards to
6 People's 10 and let me hear it.

7 Q. With respect to People's 10, you don't know what
8 he read of People's 10 other than the very first paragraph
9 with his name and address?

10 THE COURT: I'll let you answer that.

11 A. You mean the defendant, when you say, he, not
12 Detective Pacheco?

13 Q. Right.

14 A. Yes. He was reading the statement because he
15 pointed out an error and made the correction.

16 Q. You claim he pointed out an error, you don't know
17 whether he read part of that statement, do you?

18 A. No. He might have zeroed in on that one error.

19 MR. BERGER: I have nothing further.

20 THE COURT: Any last round, any redirect?

21 MR. PERRI: Just one question.

22 RE-REDIRECT EXAMINATION

23 BY MR. PERRI:

24 Q. Detective, to your knowledge, is it legally
25 required to interview a child/victim an allegation of sexual

Det. Baran - People - Redirect

1072

1 abuse, before making an arrest and proceeding?

2 A. No.

3 THE COURT: Anything on that?

4 MR. BERGER: One question.

5 RE-RECROSS-EXAMINATION

6 BY MR. BERGER:

7 Q. Is it your practice and protocol because you
8 indicated you were claiming on doing that, correct?

9 A. Yes.

10 Q. You intended to do it that night?

11 A. Under another circumstances and conditions.

12 Q. You told Crystal you were going to do that that
13 night, didn't you?

14 A. Yes.

15 MR. BERGER: Nothing further.

16 THE COURT: Thank you.

17 You may step down. Please be careful. Call
18 your next witness.

19 MR. PERRI: May we approach.

20 THE COURT: Yes.

21 (Whereupon, there was a sidebar discussion
22 with the Court and counsel, as follows:)

23 MR. PERRI: You reserved decision about
24 whether or not the People would be allowed to call
25 representatives of the NICE bus company until hearing

Proceedings

1073

1 defense counsel cross-examination of the People's
2 witness with regard to the statement. At this time we
3 renew their application to be allowed to call the
4 witness, as defense counsel put the issue, to what
5 extent the defendant is able to comprehend both English
6 and/or Spanish.

7 THE COURT: My inclination is to not allow it
8 based on what you previously said. If my understanding
9 is correct, the witness you called to testify would
10 simply testify about a procedure in which a form is
11 given to the defendant in English that advises him he
12 was speaking and understanding English and that he
13 takes it with him and it's signed and brought back.

14 MR. PERRI: It's not merely that, your Honor.
15 It would also be that the defendant was employed by
16 both the MTA and the NICE bus company since 2006 and
17 one of the -- there were responsibilities of his
18 employment, requirements that he be able to read and
19 write and that he be familiar with and know a variety
20 of rules and regulations and the documents of the NICE
21 bus company that were all in English.

22 THE COURT: I'm not going to allow it. I
23 find it to be too collateral with regards to this
24 because at the end of the day, those rules and
25 regulations that are in written in English would have

Proceedings

1074

1 been read in Spanish. This witness has no direct
2 contact with the individual. So, based on that, I'm
3 going to deny your application.

4 Now, I understand it is twelve o'clock now
5 and we anticipated calling that other witness, and
6 again, that application just having been denied, do you
7 have your other detective ready?

8 MR. PERRI: Yes.

9 MR. BERGER: Before we get to the other
10 detective, we have some matter of great importance we
11 have to handle in chambers.

12 THE COURT: I can excuse the jury.

13 MR. BERGER: I think it will take a half
14 hour.

15 THE COURT: Can you give me an idea just in
16 case I have to do some research or Kristin has to do
17 some research?

18 MR. BERGER: It's not. It's not that. I
19 mean, you may have to look at the civil rights act.

20 THE COURT: Just say it.

21 MR. BERGER: We have to bring to the Court's
22 attention certain things we have access to and learned,
23 and we need to consult with you. We have to put it on
24 the record afterwards. I thought we should bring it up
25 in an informal atmosphere.

Proceedings

1075

1 THE COURT: Based on a civil rights
2 violation?

3 MR. BERGER: We can explain it at length.

4 THE COURT: I'll excuse the jury until 2:00.
5 (Whereupon, the proceedings resumed.)

6 THE COURT: Being it's such a beautiful day,
7 I will give you a little extended lunch break. I
8 expect you to be back here at 2:00. Keep an open mind
9 throughout the trial. Do not the discuss the case
10 amongst yourselves or with anyone else during the
11 trial. Do not permit anyone to discuss the case in
12 your presence. Do not talk to the lawyers, witnesses,
13 or defendant during the trial.

14 And do not visit or view the place where the
15 charged crime is allegedly committed, or any other
16 place involved in the case.

17 And if there is any news coverage of the
18 case, do not read, view or listen to any accounts or
19 discussions of the case reported by the news media, and
20 do not attempt to research any fact issue or law
21 related to this case, whether by discussion with
22 others, by research in the library or Internet, or by
23 any other means or source. Have a great lunch. See
24 you all at 2:00.

25 (Whereupon, the jury exited the courtroom.)

Proceedings

1076

1 THE COURT: Do you want to start on the
2 record or off the record?

3 MR. BERGER: I think we should start off the
4 record. Mr. Elman is familiar, more familiar with new
5 answers of this issue, and I ask we go back in the
6 chambers with you to discuss this issue.

7 (Whereupon, a luncheon recess was taken.)

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1 (Whereupon, pages 1077-1104 were sealed.)

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Det. Pacheco - People - Direct

1105

1 THE COURT: Welcome back. Sorry about the
2 delay. Call your next witness.

3 MR. PERRI: The People call Detective
4 Reinaldo Pacheco.

5 R E I N A L D O P A C H E C O, Detective, called on behalf
6 of the People, having been duly sworn, took the witness
7 stand and testified as follows:

8 THE CLERK: State your full name, spell your
9 last name, give your shield and command.

10 THE WITNESS: First name is Reinaldo
11 R-E-I-N-A-L-D-O, last name P-A-C-H-E-C-O. Shield
12 number 1179. I work in the special victims.

13 THE COURT: You may inquire.

14 MR. PERRI: Thank you.

15 DIRECT EXAMINATION

16 BY MR. PERRI:

17 Q. Good afternoon, detective.

18 A. Good afternoon.

19 Q. How long have you been a member of law
20 enforcement?

21 A. In Nassau County I've been here for fifteen years.
22 In the city I was an officer for about seven and-a-half
23 years.

24 Q. How long have you been a detective?

25 A. About five years now.

Det. Pacheco - People - Direct

1106

1 Q. How long have you been assigned to the special
2 victims squad?

3 A. Five years, about five years.

4 Q. Are you able to read and speak Spanish?

5 A. Yes.

6 Q. Where is your family from?

7 A. Puerto Rico.

8 Q. Where were you born?

9 A. Puerto Rico.

10 Q. What was your first language that you learned
11 growing up?

12 A. Spanish.

13 Q. At what point did you learn English?

14 A. In school.

15 Q. How often do you read and/or speak Spanish?

16 A. Every day.

17 Q. Drawing your attention to October 16, 2013, were
18 you working on that date?

19 A. Yes.

20 Q. Were you working a day tour or night tour?

21 A. Night tour.

22 Q. At some point did you become involved in an
23 investigation into a matter involving Mya Ramirez and Daniel
24 Ramirez?

25 A. Yes.

Det. Pacheco - People - Direct

1107

1 Q. Were you the carrying detective on that case?

2 A. No, I was not.

3 Q. Whose case was it?

4 A. That's Detective Baran's case.

5 Q. Did there come a time when you met Daniel Ramos?

6 A. Yes.

7 Q. Where were you when you first saw Daniel Ramos?

8 A. Where was I?

9 Q. Yes.

10 A. In the special victims squad.

11 Q. Where was Daniel Ramos?

12 A. In the interview room.

13 Q. Do you see that individual you learned who was
14 named Daniel Ramos in the court today?

15 A. Yes.

16 Q. Identify him by pointing at him and naming the
17 color of an article of clothing.

18 A. White shirt right there.

19 MR. PERRI: Let the record reflect the
20 witness identified the defendant.

21 THE COURT: It will so reflect.

22 MR. PERRI: Thank you, your Honor.

23 Q. When the defendant first arrived in the special
24 victims squad, were you involved in the investigation?

25 A. No.

Det. Pacheco - People - Direct

1108

1 Q. How did you become involved in the investigation
2 incident involving the defendant?

3 A. Through Detective Baran.

4 Q. What was your primary role in the case?

5 A. Basically, I read the rights and read back a
6 statement.

7 Q. Were you working on another matter that night?

8 A. I was.

9 Q. What was the first thing you translated as being
10 part of Detective Baran's investigation?

11 A. The rights card.

12 Q. Where was the defendant when his rights were read
13 to him?

14 A. In the interview room.

15 Q. Was he standing or seated?

16 A. He was seated.

17 Q. To your knowledge, was he cuffed?

18 A. I don't recall.

19 Q. Who else was present in the room when the rights
20 were read to him?

21 A. Detective Baran.

22 Q. And did you, in fact, read the defendant his
23 rights?

24 A. I did.

25 Q. What language did you use?

Det. Pacheco - People - Direct

1109

1 A. Spanish.

2 Q. How did you read the defendant his rights?

3 A. Off the card.

4 MR. PERRI: I ask what was moved into
5 evidence as People's 9 be shown to the witness.

6 THE COURT: It may.

7 (Whereupon, People's Exhibit 9 was handed to
8 the witness.)

9 Q. Detective, do you recognize what is in evidence as
10 People's 9?

11 A. Yes.

12 Q. What do you recognize it to be?

13 A. The rights card.

14 Q. How do you recognize it to be -- I'm sorry,
15 withdrawn. When you say the rights card, is that the rights
16 card you used with the defendant, Daniel Ramos?

17 A. Yes.

18 Q. How do you recognize it to be the same card?

19 A. It has his signature on it, and my name and
20 signature on it, and Detective Baran's signature on it.

21 Q. You notice the 2340 written there; can you explain
22 what that signifies?

23 A. 2340 is the time they were read to him.

24 Q. Looking at People's 9, detective, could you
25 describe what appears on both sides of that document?

Det. Pacheco - People - Direct

1110

1 A. There's a Spanish version and English version.

2 Q. And have you read both sides of that document
3 before reading it to the defendant?

4 A. Have I read it in the past?

5 Q. In the past.

6 A. Yes.

7 Q. Is the Spanish language side a complete and
8 accurate translation of the English side?

9 A. Yes.

10 Q. October 16, 2013, did you read the defendant his
11 rights on the Spanish side of that card?

12 A. I did.

13 Q. Could you please demonstrate for the jury reading
14 the English side for the card, how you read the rights?

15 A. Sure.

16 THE COURT: Slowly, please.

17 A. Police department, County of Nassau, New York.
18 Notification of rights prior to custodial interrogation.
19 Before asking you any questions, you understand you have the
20 right to remain silent. Any statements you make may be used
21 against you in court.

22 Also, you have the right to talk to a lawyer
23 before answering any questions or to have a lawyer present
24 at any time. If you cannot afford a lawyer, one will be
25 furnished for you if you wish. And you have the right to

Det. Pacheco - People - Direct

1111

1 keep silent until you had a chance to talk to a lawyer. Do
2 you understand?

3 Q. After you read that --

4 MR. PERRI: Withdrawn.

5 Did you read that section in Spanish?

6 A. In Spanish?

7 Q. After reading the section in Spanish, what
8 happened next?

9 A. He signed. He put si, and signed his name to it.

10 Q. What does the word S-I mean?

11 A. Yes.

12 Q. When you say, he, is that the defendant?

13 A. That's correct.

14 Q. After the defendant wrote si, S-I, and signed his
15 name, what happened next?

16 A. Now that I advised you of your rights, are you
17 willing to answer questions.

18 Q. What, if anything, happened after you read that
19 sentence?

20 A. He signed the card also.

21 Q. Did you make any other markings?

22 A. He wrote si and signed his name to the card.

23 Q. When you read that sentence that you just read,
24 did you read in Spanish or English?

25 A. We read in Spanish.

Det. Pacheco - People - Direct

1112

1 Q. After that section was read out loud by you to the
2 defendant, what happened next?

3 A. I had him read the bottom portion of the card.

4 Q. And could you please read into the record what
5 appears in the bottom portion of the card?

6 A. The same thing as the top, you are saying you
7 understand your rights and you make the following statements
8 freely and voluntarily, and you are willing to give a
9 statement without talking to a lawyer or having the lawyer
10 present.

11 Q. Why do you believe the defendant was reading that
12 second section of the card?

13 MR. BERGER: Objection.

14 THE COURT: Sustained as to form.

15 Q. What, if anything, did the defendant do after you
16 instructed him to read that section of the card?

17 A. He signed the bottom of the card.

18 Q. Prior to signing the bottom of the card, was he
19 looking at the card?

20 A. Yes.

21 Q. Detective, how many times does the defendant's
22 signature appear on that card?

23 A. Three times.

24 Q. And who else was present as you read the defendant
25 his rights from that card?

Det. Pacheco - People - Direct

1113

1 A. Detective Baran.

2 Q. After the detective signed the rights card, the
3 third time, what, if anything, else did you do, or what did
4 you do next?

5 A. I left.

6 Q. Who is left in the room with the defendant?

7 A. Detective Baran.

8 Q. Before you left the room, were Detective Baran and
9 the defendant speaking?

10 A. Yes.

11 Q. What language was the defendant and Detective
12 Baran speaking?

13 A. English.

14 Q. Did you observe the defendant having any apparent
15 difficulty communicating with Detective Baran in English?

16 A. No.

17 Q. Where did you go?

18 A. I left and went back to my desk.

19 Q. Did you remain in the special victims squad?

20 A. Yes, I did.

21 Q. Were you working on other cases?

22 A. That's correct.

23 Q. Did there come a time when you returned to the
24 interview room?

25 A. Yes.

Det. Pacheco - People - Direct

1114

1 Q. And could you explain to the Court and jury how it
2 came that you returned to the interview room? Why did you
3 go back?

4 A. Detective Baran asked me to go back and read the
5 statement he took from the defendant and read it back to him
6 in Spanish.

7 MR. PERRI: I ask People's 10 in evidence be
8 shown to the witness and People's 9 be taken away.

9 THE COURT: It may.

10 (Whereupon, People's Exhibit 10 was handed to
11 the witness.)

12 Q. Detective, do you recognize People's 10?

13 A. Yes.

14 Q. What do you recognize it to be?

15 A. The statement that was taken by Detective Baran.

16 Q. And when you returned to the interview room, what,
17 if anything, did you do with that statement?

18 A. Read it back to the defendant.

19 Q. And what language did you read it back to him in?

20 A. Spanish.

21 Q. Did you translate the entire document to the
22 defendant?

23 A. That's correct.

24 Q. Did you read it out loud?

25 A. That's correct.

Det. Pacheco - People - Direct

1115

1 Q. Could you explain -- sorry, withdrawn.

2 Did there come a time -- do you see markings of
3 the letters R and P in both location on that paper?

4 A. Yes.

5 Q. Explain to the jury and the Court how the markings
6 RP came to be on that page?

7 A. These markings came about after those corrections
8 made on the statement. I marked them as I told him what it
9 was, the changes that were made on the statements
10 themselves.

11 Q. When you say, him, are you talking about the
12 defendant?

13 A. That's correct.

14 Q. When you are explaining to him the markings, in
15 Spanish?

16 A. Yes.

17 Q. Were the handwritten corrections present on that
18 page? Were they there prior to your translating the
19 documents to the defendant?

20 A. That's correct.

21 Q. Did you translate the corrections as well to the
22 defendant?

23 A. I did.

24 Q. Drawing your attention to the word, to the term --
25 to the word pussy that appears in that document, did you

Det. Pacheco - People - Direct

1116

1 translate that word to the defendant?

2 A. I did.

3 Q. How did you translate that word?

4 A. It translates to vagina, which is vahina.

5 Q. What, if anything, did the defendant do after you
6 finished translating the statement?

7 A. He signed the bottom.

8 Q. What did you do?

9 A. Signed the bottom.

10 Q. What did Detective Baran do?

11 A. Signed the bottom also.

12 Q. Did you sign one page or multiple pages? You may
13 take it.

14 A. Two pages.

15 Q. Did the defendant sign both pages?

16 A. Yes, he did.

17 Q. Did Detective Baran sign both pages?

18 A. Yes, he did.

19 Q. Approximately, how long did this process of
20 translating the statement and have the defendant sign off on
21 it take?

22 A. About ten minutes.

23 MR. PERRI: I ask People's 10 be taken from
24 the witness. People's 11 in evidence could be shown to
25 the witness.

kmm

Det. Pacheco - People - Direct

1117

1 THE COURT: It may.

2 (Whereupon, People's Exhibit 11 was handed to
3 the witness.)

4 Q. Detective, do you recognize People's 11 in
5 evidence?

6 A. Yes.

7 Q. What do you recognize it to be?

8 A. An apology letter by the defendant.

9 Q. Were you present when this letter was written?

10 A. No, I was not.

11 Q. How did you first come to see this letter?

12 A. From Detective Baran.

13 Q. And where did he show you this letter?

14 A. In the office.

15 Q. And what did you do for Detective Baran when he
16 showed you this letter?

17 A. I told him what it said.

18 Q. Detective, were you able to translate that letter?

19 A. Yes.

20 Q. What language does it appear in?

21 A. Spanish.

22 Q. Please translate it into the record in English.

23 A. Sure. To Crystal and Mya, I'm writing this letter
24 asking for a million pardons. The truth is, that I'm very
25 remorse for what happened, and I never meant to harm you, or

Det. Pacheco - People - Direct

1118

1 any of you's, let alone the children. I hope, Crystal, that
2 you read this letter and that take into conscious and
3 retract the charges against me. I never meant to hurt.
4 Please, I ask you to retract the charges against me. Daniel
5 Ramos.

6 MR. PERRI: I ask that People's 11 be taken
7 from the witness.

8 Q. Detective, were you or Detective Baran armed when
9 you were with the defendant in the interview room?

10 A. No.

11 Q. And while you were with the defendant in the
12 interview room, did you make any promises to the defendant
13 or offer any leniency?

14 A. No.

15 Q. Did you hear, observe any other members of law
16 enforcement make such offers or make any threats against the
17 defendant?

18 A. No.

19 Q. While you were with the defendant in the interview
20 room, did you, yourself, threaten the defendant in any way?

21 A. No.

22 Q. Detective, do you know -- apart from?

23 MR. PERRI: Withdrawn.

24 Q. Prior to this case, did you know an individual
25 named Daniel Ramos?

Det. Pacheco - People - Cross

1119

1 A. No.

2 Q. Did you know Crystal Ramirez?

3 A. No.

4 Q. Did you know Mya Ramirez?

5 A. No.

6 MR. PERRI: Thank you, your Honor. Nothing
7 further.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. BERGER:

11 Q. Detective Pacheco, you testified here about
12 various things this afternoon, correct?

13 A. That's correct.

14 Q. Did you make any notes or memorandum about
15 anything you testified to?

16 A. I did not.

17 Q. So, what you are testifying to is based upon your
18 independent recollection?

19 A. That's correct.

20 Q. Did you talk with Detective Baran about what your
21 role was in connection with this case?

22 A. Yes.

23 Q. And he talked to you about his role, as well, as
24 far as taking the statement, correct?

25 A. About us taking a statement, no.

Det. Pacheco - People - Cross

1120

1 Q. I'm sorry?

2 A. About taking the statement?

3 Q. Yes.

4 A. No.

5 Q. Well, you testified a moment ago that you heard
6 the defendant speaking English with Detective Baran?

7 A. That's correct.

8 Q. For how long were you listening to him speaking?

9 A. As soon as I finished with the rights card, I left
10 the room, but they were talking to each other.

11 Q. When you say, you finished with the rights card,
12 you left the room?

13 A. That's correct.

14 Q. How did you hear them talking in English?

15 A. Because they were still talking. They were
16 talking. He signed the card. I signed the card, and they
17 were having conversation. As far as what the conversation
18 was, I don't recall.

19 Q. I thought you said that the minute you finished
20 the rights card, you left the room?

21 A. Yes. They had a conversation. I didn't have a
22 conversation.

23 Q. Weren't you there witnessing the rights card?

24 A. I was.

25 Q. So after you put your signature on the rights

Det. Pacheco - People - Cross

1121

1 card, you left the room, correct?

2 A. That's correct, but as I was leaving, they were
3 talking.

4 Q. So, was it a matter of seconds?

5 A. Could be, but they were talking.

6 Q. You say could be. You are the one that was there?

7 MR. PERRI: Objection.

8 THE COURT: Sustained.

9 Q. You were there, right?

10 A. That's right.

11 Q. How long was it you heard them talking in English?

12 A. It could have been seconds.

13 Q. You don't have a specific recollection of that?

14 A. They were talking, yes, English.

15 Q. And you are saying it could be seconds or was
16 seconds?

17 A. It was seconds.

18 Q. Now, you say you read back the English, the
19 statement that is in English in Spanish to the defendant; is
20 that right?

21 A. That's correct.

22 Q. Did you read it to him with the same proficiency
23 that you exhibited today when you just read from People's
24 11?

25 MR. PERRI: Objection.

Det. Pacheco - People - Cross

1122

1 THE COURT: Overruled. Do you understand the
2 question?

3 A. No, could you rephrase that?

4 Q. When you just read People's 11, you had a few
5 hesitations in the translation, right?

6 A. Yes.

7 Q. And is that the way you read the English statement
8 to him?

9 A. You have to understand something, it's not always
10 -- it doesn't translate exactly the same. You would have to
11 kind of take your time to read that. Not everything that
12 you read in Spanish translates exactly like English, or when
13 you are doing it the other way around, it doesn't translate
14 the same.

15 Q. Let me ask you something: There are many words in
16 the English language that refer to the female genitalia;
17 aren't there?

18 A. That's correct.

19 Q. And are there many in Spanish that do the same?

20 A. That's correct.

21 Q. So, is there a word in Spanish that is the word
22 for vagina?

23 A. There's several words.

24 Q. So, you wouldn't say vagina is the same as pussy,
25 would you?

Det. Pacheco - People - Cross

1123

1 A. Yes, I would.

2 Q. That's what it means, but as far as words go?

3 A. That's what it is. That's what people -- when
4 they are talking about, that's what it means.

5 Q. I know what it means, detective. You said there
6 were many words that can mean vagina in Spanish, right?

7 A. That's correct.

8 Q. Some are slang, some are derogatory, correct?

9 A. That's correct.

10 Q. Where would you put the word pussy in the English
11 language in that regard?

12 MR. PERRI: Objection.

13 THE COURT: Sustained.

14 Where would he put that word in the English
15 language? Sustained. Ask another question.

16 Q. Did you talk to Mr. Perri about your involvement
17 in the taking of the statement and the rights card prior to
18 the hearing?

19 A. Taking of the statement? I didn't take the
20 statement.

21 Q. Well, you were part of the process, correct, that
22 you also say you read the statement to him in Spanish,
23 didn't you?

24 A. Yes.

25 Q. That's part of it, isn't it?

Det. Pacheco - People - Cross

1124

1 A. Okay.

2 Q. Is it, detective, or not?

3 A. Yes, it is.

4 Q. And you read that to him, you say, before he
5 signed it, right?

6 A. Yes, I did.

7 Q. Wouldn't that be part of the process of taking the
8 statement?

9 A. I didn't take the statement.

10 THE COURT: The answer will stand.

11 MR. PERRI: Yes, your Honor.

12 Q. You were part of the process, you say which
13 involved the defendant putting his signature on that piece
14 of paper, correct?

15 A. That's correct.

16 Q. Isn't that taking a statement or not?

17 A. It's not.

18 MR. PERRI: Objection.

19 THE COURT: The objection is going to be
20 sustained. Next question.

21 Q. You were involved in the process, correct?

22 A. That's correct.

23 Q. Did you talk to Mr. Perri about your involvement
24 in the process of having the defendant's signature being put
25 on the piece of paper?

Det. Pacheco - People - Cross

1125

1 A. Yes.

2 Q. You were in Mr. Perri's office and Detective Baran
3 was there as well, right?

4 A. Yes.

5 Q. And so you heard what he said happened, correct?

6 A. What who?

7 Q. Detective Baran.

8 A. What he said happened?

9 Q. Detective Baran told Mr. Perri what happened, how
10 they took the statement, you were there?

11 A. I wasn't listening to what they were saying.

12 Q. You were sitting right next to them?

13 A. I was not paying attention.

14 MR. PERRI: Objection.

15 THE COURT: Overruled.

16 Q. You were just sitting in the chair not paying
17 attention; is that right?

18 A. That's correct.

19 Q. Do you recall if you heard Detective Baran talking
20 to Mr. Perri about the process of taking a statement?

21 A. I did not.

22 Q. You didn't hear it?

23 A. The process of taking a statement?

24 Q. When Detective Baran was talking to Mr. Perri.

25 A. Correct.

Det. Pacheco - People - Cross

1126

1 Q. About the taking of the statement, you were
2 sitting next to him, correct?

3 A. That's correct.

4 Q. You knew that's what he was talking about, didn't
5 you?

6 A. I did not. I could say I wasn't paying attention
7 to them.

8 Q. You could say it. I don't know if --

9 MR. PERRI: Objection.

10 THE COURT: Sustained.

11 Next question.

12 Q. You knew you were there in Mr. Perri's office to
13 talk about the taking of the statement, you were there for a
14 hearing; isn't that right?

15 MR. PERRI: Objection, your Honor.

16 THE COURT: Overruled. We're talking about
17 the hearing now.

18 Q. Yes. You knew in Mr. Perri's office you were
19 there testifying in connection with the hearing, correct, in
20 connection with taking the statement?

21 A. Taking the statement? I didn't take a statement.

22 Q. In connection with the process of taking a
23 statement, you knew you were there for that; did you not?

24 A. I was there for reading it back.

25 Q. You testified that's what you did, I'm asking you?

Det. Pacheco - People - Cross

1127

1 MR. PERRI: Objection.

2 Q. I'm asking you whether or not you knew you were
3 there to testify concerning the process of your involvement
4 in taking of the statement?

5 THE COURT: I'll allow the question. You can
6 answer.

7 A. My involvement was to read it back.

8 Q. You knew you were in Mr. Perri's office to talk
9 about that, correct?

10 A. He was going to ask me what I did.

11 Q. Yes. You knew you were there for that purpose
12 that day, didn't you?

13 A. For what I did?

14 Q. That's a question.

15 A. Yes, for what I did.

16 Q. Did you know that Detective Baran was there also
17 to tell his involvement in the process of taking a
18 statement?

19 A. I don't know what -- I guess he's going to speak
20 about his part of the investigation. I have no idea what he
21 said.

22 Q. Did you ever discuss this case with Detective
23 Baran prior to you testifying at the hearing?

24 A. Yes.

25 Q. How many times did you do that?

Det. Pacheco - People - Cross

1128

1 A. I believe it was just twice.

2 Q. And the subject matter that you talked to him
3 about was your role in reading of the statement to
4 Mr. Ramos, correct?

5 A. That's correct.

6 Q. And your role, you're supposedly giving the rights
7 to Mr. Ramos, correct?

8 A. That's correct.

9 Q. And you discussed that at least one of those two
10 times approximately a week before the hearing; is that
11 right?

12 A. That's correct.

13 Q. One of the things you talked about with him was
14 the fact that the defendant speaks Spanish, but the
15 statement is in English, correct?

16 A. Did I speak to him about that?

17 Q. Yes.

18 A. No.

19 Q. Let me ask you if you made these answers to these
20 questions at the hearing back in September of 2014. By the
21 way, you did testify at the hearing, correct?

22 A. That's correct.

23 Q. You were under oath; were you not?

24 A. That's correct.

25 Q. Page 235, line 14.

Det. Pacheco - People - Cross

1129

1 "QUESTION: And did the subject matter that
2 you and Detective Baran talked about include the fact
3 that the defendant speaks Spanish, but that the
4 statement is in English?

5 "ANSWER: Yes."

6 Did you make that answer to that question?

7 A. Yes.

8 Q. And was that true?

9 A. I guess it was.

10 Q. And is it true today?

11 A. Yes.

12 Q. And did you also include in your conversations
13 with Detective Baran the fact that what you and Detective
14 Baran did with Mr. Ramos in the interrogation room?

15 A. What we did?

16 Q. Yes, when you discussed with Detective Baran, did
17 it also include what went on in the interrogation room with
18 the defendant?

19 A. As far as what, reading the rights?

20 Q. Whatever went on, did you talk to Detective Baran
21 about that?

22 A. Only about reading the rights and what I did, read
23 the statement.

24 Q. My question to you was: Did your conversation
25 with Detective Baran before coming in to court to testify at

Det. Pacheco - People - Cross

1130

1 the hearing, include what you did and what he did with the
2 defendant in the interrogation room?

3 A. I wasn't in the interrogation room with him, only
4 to read the rights.

5 Q. Listen, listen, to my question, please. I'm
6 asking you whether or not your conversations with Detective
7 Baran, prior to going in to testify, you said you had a
8 conversation with him at least one week before and then
9 there was a second; do you remember saying that?

10 A. Yes.

11 Q. Did the subject matter of those conversations
12 include what you and Detective Baran did with the defendant
13 in that interrogation room?

14 A. We didn't do anything. Yes, it's just my part was
15 read the rights, and read back the statement. There was no
16 we in the interrogation room as far as interrogating the
17 defendant.

18 Q. Let me ask then if you made this answer to the
19 question at the hearing. Line 3, page 237.

20 "QUESTION: Did your conversations with
21 Detective Baran before coming to court include what you
22 and he did with the defendant in the interrogation
23 room?

24 "ANSWER: Yes."

25 Did you make that answer to that question?

Det. Pacheco - People - Cross

1131

1 A. Yes.

2 Q. Was it true?

3 A. Yes.

4 Q. Is it true today?

5 A. Yes, it is. But it's just for the statement and
6 the rights card.

7 Q. I understand what you are saying. I'm asking you
8 if you discussed that with him and the answer is yes?

9 A. Okay, yes.

10 Q. And you each talked about your own individual
11 involvement in that room with the defendant, didn't you?

12 A. No. My involvement, was, again, the rights card
13 and the statement.

14 Q. Let me ask you again if you made this answer to
15 this question. Page 237, line seven.

16 "QUESTION: And you told him your involvement
17 and he told you his involvement, correct?

18 "ANSWER: That's correct."

19 A. Yes, I did, my involvement --

20 Q. Was that true?

21 A. Yes, and it stands true now, but my involvement,
22 again, was the statement.

23 Q. Just answer my question.

24 MR. PERRI: Your Honor, the witness is trying
25 to answer the question. May he please finish the

Det. Pacheco - People - Cross

1132

1 answer.

2 THE COURT: Let me step in. I want to remind
3 everybody that the reporter can only take down one
4 person speaking at a time. It's very important that we
5 let a full question be asked and a full answer be
6 given.

7 Mr. Berger, please ask your next question.

8 Q. Did Detective Baran ask you to go into the
9 interrogation room in case he didn't understand, or there
10 was a problem and he is referring to Mr. Ramos; did he ask
11 you that?

12 A. That's correct.

13 Q. And Detective Baran told you that he wanted you
14 there because you spoke Spanish, right?

15 A. He didn't tell me because I spoke Spanish, he
16 asked me to come in.

17 Q. Let me ask you if you made these answers to these
18 questions: Page 241, line two.

19 "QUESTION: Did you say to him why do you
20 need me to go be with you?

21 "ANSWER: I don't recall if that is exactly
22 the words I used.

23 "QUESTION: I understand. But in sum and
24 substance, did you say to Detective Baran, why do you
25 need me?

Det. Pacheco - People - Cross

1133

1 "ANSWER: I might have.

2 "QUESTION: And did he explain it to you?

3 "ANSWER: Yes.

4 "QUESTION: What? That there is a language
5 issue?

6 "ANSWER: Because he speaks Spanish.

7 "QUESTION: Pardon?

8 "ANSWER: Because he speaks Spanish.

9 "QUESTION: He wanted you there because he
10 told you the defendant spoke Spanish, right?

11 "ANSWER: That's correct."

12 Did he tell you that?

13 A. Yes, it was kind of confusing the way you asked.

14 Q. Do you understand what I read, don't you?

15 A. Yes.

16 Q. You happen to have read the minutes before
17 testifying here today?

18 A. Somewhat.

19 Q. Somewhat?

20 A. I went through them, yes.

21 Q. But you say you went through them, you read them,
22 didn't you?

23 A. Yes.

24 Q. Now, the defendant wanted his rights in Spanish?

25 A. That's correct.

Det. Pacheco - People - Cross

1134

1 Q. How did that come about?

2 A. He was asked.

3 Q. Were you there when he was asked?

4 A. Yes.

5 Q. Asked by Detective Baran?

6 A. I don't know if it was by Detective Baran or by
7 me.

8 Q. You don't remember?

9 A. I do not, but it was asked.

10 Q. Did you know that the defendant had not ever been
11 arrested before this date?

12 MR. PERRI: Objection.

13 MR. BERGER: If you know.

14 THE COURT: I will allow it, if you know.

15 Q. If you know.

16 A. No.

17 Q. Let me ask you this: Did you tell him, did you
18 just read the rights straight there?

19 A. What do you mean?

20 Q. Did you stop after each right and explain what
21 each one meant?

22 A. I did not.

23 Q. You just read it straight through?

24 A. That's correct.

25 Q. Did you explain to him what it means that you have

Det. Pacheco - People - Cross

1135

1 the right to remain silent and that anything you say could
2 be used against you in court?

3 A. I did not.

4 Q. Did you take an audio or video of him being given
5 his rights?

6 A. I did not.

7 Q. Did you ever advise the defendant what he was
8 going to be asked about?

9 A. I did not.

10 Q. Did anyone ask you to leave the room after you
11 read him the rights?

12 A. Did anyone ask me to leave?

13 Q. Yes.

14 A. No.

15 Q. You didn't get a signal from Detective Baran?

16 A. Not that I recall or remember.

17 Q. So that might have happened, you just don't
18 remember; is that right?

19 A. I don't recall.

20 Q. I'm asking you whether or not at that point in
21 time, Detective Baran gave you a signal to leave the room?

22 MR. PERRI: Objection.

23 THE COURT: Overruled.

24 A. I don't recall.

25 Q. Let me ask you if you made this answer to this

Det. Pacheco - People - Cross 1136

1 question back at the hearing. Page 249, line 17.

2 "QUESTION: Did he give you any kind of
3 signal to leave the room?

4 "ANSWER: No."

5 Did you make that answer to that question?

6 A. That's correct.

7 Q. Was it true then?

8 A. Yes, it is.

9 Q. Is it true now?

10 A. Yes, it is.

11 Q. Now you recall?

12 A. I'm saying that's what I said. I said I didn't
13 recall.

14 Q. I know, now you recall. Recalling is not a yes or
15 no answer.

16 A. It's no, I don't recall.

17 Q. Was it true then when you said he did not?

18 A. Yes. Yes, I don't recall.

19 Q. Baran asked you to read the statement to Mr. Ramos
20 in Spanish, correct?

21 A. That's correct.

22 Q. And we only have your word for the fact that you
23 read the entire statement to him, correct?

24 A. That's correct.

25 Q. Because there was nobody else in the room that

Det. Pacheco - People - Cross

1137

1 speaks Spanish, correct?

2 A. That's correct.

3 Q. And no video or audio machine, correct?

4 A. That's correct.

5 Q. Did you see the defendant put his initials on the
6 statement?

7 A. I did not.

8 Q. So you don't know how his initials got on that
9 statement?

10 A. I do not.

11 Q. And you don't know who changed the words on the
12 statement, do you?

13 A. I do not know. I do not. I wasn't there.

14 Q. But you put your initials on the statement even
15 though you didn't witness the changes?

16 A. That's correct.

17 Q. So what do your initials mean if you didn't see
18 him do it?

19 A. Okay, the reason why my initials are there, is
20 because basically, when I read it back to him, that's to
21 assure him, that yes, I read the changes that he made. So,
22 I initialed next to it so he can't say you never read them
23 back, so that's why the initials are on there.

24 Q. Your initials are that you are claiming -- your
25 initials on that statement are to show that you read the

Det. Pacheco - People - Cross

1138

1 changes that were there even though you didn't witness it?

2 A. That's correct, because I read them back to him.

3 Q. But you didn't witness the changes being made?

4 A. I did not, but I read them back.

5 Q. So your initials are not that you witnessed the
6 changes being made, just that you say you read them?

7 A. That's correct.

8 Q. Did you ask the defendant to read the statement in
9 English?

10 A. Did I ask him to read it?

11 Q. In English?

12 A. No.

13 Q. When you say you read the statement to the
14 defendant, was he seated across from you as you read it to
15 him?

16 A. He was sitting across from me.

17 Q. And you never witnessed the defendant read that
18 statement in English, did you?

19 A. I did not.

20 Q. Did you see the defendant sign the statement?

21 A. I did.

22 Q. So, in this case, your signature on it means you
23 did witness him signing it; is that right?

24 A. That I read it back to him.

25 Q. You don't know whether or not the defendant read

Det. Pacheco - People - Cross

1139

1 this statement to Detective Baran, do you?

2 A. I do not.

3 Q. Were you there when the defendant wrote People's
4 11, the so-called apology letter?

5 A. I was not.

6 Q. The translation you read with respect to People's
7 11, is there any language in there that says that he put his
8 mouth or tongue on the vagina of Mya?

9 A. It does not.

10 Q. Is there any language in there he sexually abused
11 Mya?

12 A. It does not.

13 Q. Did the defendant read the rights card to you?

14 A. The bottom half.

15 Q. He read it aloud?

16 A. Yes, he did.

17 Q. In Spanish?

18 A. Yes, he did.

19 Q. And was Detective Baran there as well?

20 A. Yes, he was.

21 Q. Did you talk to Detective Baran in the hallway
22 today when we took a break about this case?

23 A. No.

24 Q. You didn't talk about protocol and requirements of
25 the detectives with respect to sex crime cases?

kmm

Det. Pacheco - People - Cross

1140

1 A. Protocol? I don't know what you are talking
2 about.

3 Q. You don't know what the word protocol is?

4 A. I don't know what you are talking about.

5 Q. You know what protocols are, don't you?

6 A. Yes.

7 Q. Did you talk to Detective Baran outside in the
8 hallway today?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. As far as protocols on what? Protocols on what?
12 You are not explaining yourself.

13 Q. On procedures in --

14 A. No.

15 THE COURT: Wait for an entire question to be
16 asked. I just had asked him to wait for an entire
17 question to be asked.

18 Q. Did you talk to him about procedure with respect
19 to investigation of sex cases?

20 A. No.

21 Q. You did talk to him today in the hallway, didn't
22 you?

23 A. Yes.

24 Q. After he had gotten off the witness stand or at
25 least at a time when there was a break, right?

Det. Pacheco - People - Cross

1141

1 A. Yes.

2 Q. And it didn't include anything about this case?

3 A. No.

4 Q. So your testimony before to Mr. Perri was, the
5 defendant had no problem understanding English based upon
6 your hearing a couple of seconds of exchange between
7 Detective Baran and the defendant?

8 A. That's correct.

9 Q. That's what you based your conclusion on?

10 A. Yes, that he spoke English.

11 Q. Your answer was, Mr. Perri, was it not, the
12 defendant had no problem understanding English?

13 A. They were saying words to each other. I would
14 imagine they understood each other.

15 Q. You are imagining, correct?

16 A. No, I heard.

17 Q. You just said, I imagine they understood each
18 other?

19 A. That's a use of words, but I heard them speaking
20 to each other in English.

21 Q. For a couple of seconds?

22 A. Yes.

23 Q. And it's just a few seconds you could hear both of
24 them talk to each other and exchange words in a few seconds?

25 A. Yes, because I was walking out.

1 Q. Walking in or out?

2 A. Walking out.

3 Q. So, based upon a few seconds, you testified that
4 the defendant, Mr. Ramos, had no problem understanding
5 English; is that your testimony?

6 A. Yes.

7 MR. BERGER: Thank you. Nothing further.

8 THE COURT: Redirect.

9 MR. PERRI: Nothing further, your Honor.

10 THE COURT: You may step down. Thank you
11 very much.

12 People, call your next witness.

13 MR. PERRI: The People rest.

14 THE COURT: Thank you. At this time, ladies
15 and gentlemen, at the conclusion of the People's case
16 there are some legal matters that the Court must attend
17 to. Before we proceed, given the hour, its ten to
18 four. What we'll do is break for the day. You now
19 have a nice long weekend to yourselves. You may have
20 to go to your old jobs, but you don't have to come
21 here. I will not see you tomorrow, nor will I see you
22 Monday, but I will see all of you bright and early on
23 Tuesday, May 19th. Please be in the jury room by 10:00
24 a.m. so that we can get started as soon thereafter as
25 everyone gathers up. Remember to bring a magazine or

Proceedings

1143

1 something with you because sometimes I'm not so good at
2 telling time. Keep yourselves occupied.

3 Over this break it is really important that
4 you keep an open mind throughout the trial. Do not
5 discuss the case amongst yourselves or with anyone else
6 during the trial. Do not permit anyone to discuss the
7 case in your presence. Do not talk to the lawyers,
8 witnesses, or the defendant about anything during the
9 trial, and remember, if you were run into us anywhere
10 else over the next four days, we're going to ignore
11 you. Do not take it personally. Please do not visit
12 or view the place where the charged crime was allegedly
13 committed, or any other place involved in the case.

14 If there is any news coverage of the case, do
15 not read, view or listen to any accounts or discussions
16 of the case reported by the news media. Do not attempt
17 to research any fact, issue, or law related to this
18 case, whether by discussion with others, by research in
19 the library or Internet, or by any other means or
20 source.

21 Have a great four days. Enjoy the weather.
22 Stay safe. I'll see you all Tuesday morning, 10:00
23 a.m. Thank you.

24 (Whereupon, the jury exited the courtroom.)

25 MR. BERGER: Could I reserve my right to make

1 my application at this time, or give me a minute to
2 call my office and I'll decide.

3 (Whereupon, a short recess was taken.)

4 MR. BERGER: I move for a trial order of
5 dismissal. The People have failed to establish a prima
6 facie case.

7 THE COURT: People.

8 MR. PERRI: Yes, your Honor. The People
9 provided more than a prima facie case at this time.
10 The People provided testimony of Crystal Ramirez,
11 placing the defendant at the scene of the incident.
12 That she states observing him in the room with the
13 child, her daughter, Mya, who she testified to being
14 six years of age at the time of the incident. The
15 defendant was seen in the room with a child -- with the
16 child's pants and underwear down at the ground. At
17 that moment, when Crystal exclaimed what the F is going
18 on. The child responded, he licked my coochie,
19 pointing at the defendant. Both Crystal Ramirez and
20 her daughter, who was found swearable, and testified in
21 Court, identified the defendant.

22 Mya described in more detail, when she
23 testified, that the defendant placed his mouth on her
24 coochie, which she identified to both the nurse and in
25 Court as her front genital area.

1 Additionally, to that, your Honor, the People
2 have statements of admission by the defendant at the
3 time of his arrest. He admitted to Officer Boccio in
4 statements that Officer Boccio testified to both
5 stating that he licked Mya Ramirez at the medical
6 center where she wasn't transported to. She repeated
7 the allegation to the nurse examiner stating Danny
8 licked my coochie. She identified to the nurse
9 examiner it was the front genital area.

10 Her underwear was taken into custody by the
11 nurse examiner, turned over to the Nassau County Police
12 Department, a buccal swab, a DNA sample was obtained by
13 the defendant by Detective Baran. All of the items in
14 evidence tested by the medical examiner's office and
15 found that on the vulva of Mya Ramirez there was an
16 indication there was saliva present, along with a male
17 YSTR DNA.

18 In addition to that, on the inside of Mya's
19 underwear in the front area there were two stains that
20 tested positive for the presence of saliva. Within one
21 of the stains there was a full YSTR match to the
22 defendant; making it either the defendant's DNA or
23 patrilineal relative of the defendant. In the other
24 stain a partial autosomal chromosome matched with STR
25 matches made it one out of 175 million changes that it

1 was any other individual, other than the defendant's
2 DNA when those files were compared with the defendant's
3 DNA profile developed from the buccal swab.

4 In addition to that, the present evidence of
5 a full written statement made to Detective Baran, given
6 in English, after rights were given.

7 There is no evidence in the record of any
8 trickery, any threats, any promises, or anything that
9 would interfere with that statement being freely,
10 voluntarily given as a waiver of the defendant's
11 constitutional rights. The statement of admission, the
12 DNA and testimony of live witnesses, including the
13 actual victim identifying the defendant in Court as a
14 perpetrator of the oral sexual conduct upon her
15 genital, on her vulva and/or vagina substantiates more
16 than a prima facie case, and the People should be able
17 to go forward.

18 THE COURT: Based on the testimony received
19 during the trial, the defense's application for trial
20 order of dismissal is denied.

21 Mr. Berger, will you be presenting a case?

22 MR. BERGER: I am, Judge. I do not have
23 exhibit number eight.

24 MR. PERRI: It was a pre-marked exhibit in
25 relation to the testimony the People anticipated

1 calling from the NICE bus company, and denied to call
2 the witness. It was never marked for identification,
3 and not in evidence.

4 THE COURT: It will not be presented to the
5 jury.

6 MR. BERGER: I didn't know what it was.

7 THE COURT: It is from the NICE bus company.
8 It doesn't matter. I didn't allow that testimony.
9 Whatever it is, it's not relevant in any way, shape, or
10 form.

11 Mr. Berger, how many witnesses will you have
12 for the 19th? I want to fill the entire day. I need
13 to know if there is any application we need to handle
14 with regards to if they are in fact witnesses, or
15 character witnesses, or something else. How many are
16 you going to have for the 19th?

17 MR. BERGER: You know, Judge, I anticipate
18 four, but it's as much as I can say right now. I'm
19 still working out the details.

20 THE COURT: How many witnesses in total in
21 your case are you going to have, if you know?

22 MR. BERGER: It's still possibly fluid. I
23 would say maybe there will be one to three more beyond
24 that.

25 THE COURT: Just be prepared to fill the

1 entire day on Tuesday, the 19th, with testimony.

2 Now, are they witnesses in which there could
3 potentially be an application from the People for an
4 offer of proof because I want to be able to go straight
5 into this Tuesday morning.

6 MR. BERGER: I'm not making an offer right
7 now. I don't think I have to do that. I'm going to
8 put on a case. If the People object when I put my
9 witness on, let them do that. I don't have the burden
10 to do anything. I might change my mind at this point
11 in time. I intend to put a case on. I'm not going to
12 make any offer at this point.

13 THE COURT: Who are the people -- who are the
14 people you are calling for Tuesday, please, or you hope
15 to call for Tuesday?

16 MR. BERGER: Pardon?

17 THE COURT: Who are the people you hope to
18 have for Tuesday?

19 MR. BERGER: Christy Hernandez, David Ramos,
20 Stephanie Ramos, Carl Reich, R-E-I-C-H.

21 MR. PERRI: The People, at this time, ask for
22 an offer of proof with respect to each and every
23 witness they are to present to testify to any of the
24 facts at issue in this case. The defendant has not
25 testified and put his honesty at issue. The People ask

1 for an offer of proof as to what these witnesses will
2 be testifying to.

3 THE COURT: That's a fair request.

4 Mr. Berger, I need to know in general. I
5 don't need to know exactly what they will say. I need
6 to know what type of witnesses they are.

7 MR. BERGER: I don't know why this is
8 necessary at this time. I could tell you that some are
9 character witnesses.

10 THE COURT: Okay.

11 MR. PERRI: With respect to that, the People
12 would oppose character witness testimony. There is no
13 character trait at issue in the present case, and I
14 would ask defense counsel to, at the very least, or
15 make an application based upon requesting the Court to
16 define what character trait is at issue in this case.

17 THE COURT: Under character evidence, the
18 Court is guided that it should allow any sort of
19 character evidence related to an individual's
20 reputation in the community for the truth and for the
21 veracity, and it has to be related and/or related to a
22 character for the crime at issue.

23 So, Mr. Berger, without saying what they're
24 going to say, could you give me an understanding of the
25 character trait?

Proceedings

1150

1 MR. BERGER: With all due respect, I
2 understand the law and we fulfill that requirement. I
3 don't believe the People are entitled to know that.

4 THE COURT: We'll let the record stand at
5 that point and take the objection as they come and then
6 we'll keep excusing the jury next week until the Court
7 has what it needs to make its decisions because I'm not
8 going to sit here and pull teeth.

9 Have a good night everyone.

10 Make sure you fill the whole day.

11 MR. BERGER: I can't promise anything.

12 THE COURT: Fill the entire day. I'm not
13 going to waste all next week with one witness here and
14 one witness there. Fill the day.

15 MR. BERGER: I can't guarantee anything, let
16 the record reflect.

17 (Whereupon, the trial was adjourned to May
18 19, 2015.)

19 * * *

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1151

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 43

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 742N/14

5 -against- :

6 DANIEL RAMOS, :

7 Defendant. : Jury Trial

8 -----X

9 May 19, 2015
262 Old Country Road
Mineola, New York

10

B E F O R E:

11

12 HONORABLE TERESA K. CORRIGAN,
Acting Supreme Court Justice

13

A P P E A R A N C E S:

14

(As Previously Noted)

15

16 * * * * *

17

18 THE CLERK: Case on trial continued,
19 Indictment 742N of 2014, People of the State of New
20 York vs. Daniel Ramos.

21 All parties are present. The jury is not
22 present at this time.

23 Madam interpreter, put your appearance on the
24 record.

25 MR. BERGER: Charlene Perez D'Kline. Good

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Proceedings

1152

1 morning.

2 THE COURT: Good morning.

3 THE CLERK: People ready?

4 MR. PERRI: Yes, your Honor.

5 MR. BERGER: Yes, your Honor.

6 THE COURT: I understand there are a couple
7 of applications. Who would want to go first?

8 MR. BERGER: I don't know if I made this --
9 in fact, I don't think I made this in my motion for a
10 mistrial, even though I'm going to say I said it
11 before. I guess, for the record, I want to quickly
12 make this application.

13 Last week when we learned that the Uncle
14 Sincere was caught by Crystal at night engaging in
15 improperly sexual activity with her three-year old son,
16 we wanted to call her back so that I could
17 cross-examine her on that issue. Your Honor denied the
18 application, citing, among other things, the fact that
19 there was DNA evidence, and a statement of admission by
20 the defendant in evidence. I cannot understand how
21 those things could have been relevant in the Court's
22 determination since we are contesting the accuracy and
23 creditability of the DNA evidence, and we're contesting
24 the accuracy and creditability of the police officers.

25 If the Court credits it, it means you are

1 valuing that testimony, and I'm not sure how the Court
2 could value that testimony when it is contested. In
3 other words, I don't think the Court should be making a
4 determination as to its accuracy when rendering a
5 decision on a matter that is extremely important.

6 Now, we -- our position was that Crystal
7 Ramirez was not being truthful, and, in addition, we
8 wanted to demonstrate her state of mind, that is the
9 state of mind, whom had gotten out of control, having
10 once experienced this traumatic situation, actually
11 visually seeing the abuse by her father's brother, the
12 uncle of the boy, and she, therefore, assumed the worst
13 when she came into the kitchen, even though she didn't
14 visually see any abuse going on.

15 So, it was that testimony which we thought
16 was critical to evaluate the credibility of Crystal
17 Ramirez and also why what happened in the kitchen that
18 day.

19 Now, the only argument I think that the Court
20 put forth that, other than the DNA, and the statement
21 was that it was remote in time. From my figuring, this
22 was approximately six years ago, when approximately six
23 years ago, because this was an incident that occurred
24 in October of 2013, and I think it was Sincere was
25 either six, maybe seven, at the time. I did make the

1 point that if it's a trauma, that could last for years,
2 and I don't necessarily agree with your decision about
3 remoteness, but I understand that is the basis you put
4 in there. It seemed to me, in addition to remoteness
5 arguments, you were citing, again, the DNA, and the
6 statement, and I thought that was inappropriate.

7 THE COURT: Thank you. Let me just clarify
8 so that there is no question as to why I denied the
9 application. There were four main parts to my denial
10 of the application. The primary reason being the
11 remoteness in time that there was nothing before this
12 Court to show that after six years of passage of time
13 that the events that occurred back with the child
14 Sincere in any way impacts on the state of mind of
15 Crystal Ramirez today.

16 Additionally, I pointed out to counsel that
17 her testimony did not, in fact, provide direct evidence
18 of the action that happened in that she testified that
19 she did not see what your client did to the child. She
20 only saw the child's pajama pants and underwear down
21 around her ankle. Additionally, the child was not born
22 yet. That was the subject of this case at the time
23 that the incident happened, six years prior to the
24 allegations here. It's more like seven-and-a-half from
25 the point of the trial, but six years from the time of

1 the allegation.

2 Then, additionally, I had absolutely did
3 mention DNA evidence and your client's statement, but
4 understand, counselor, I'm not the trier of the facts
5 in this regard, so it's going to be up to the jury what
6 they do, or do not believe with regards to that, and
7 that is not the pivotal nor even an important part of
8 my denial of your application. It really is the
9 remoteness factor that is the main reason behind my
10 denial, in addition to everything else. All of the
11 other evidence that has come before me so far. So, I
12 thank you for making the record and giving me an
13 opportunity to clarify my ruling in that regard.

14 Your application, I know you said you had not
15 made it within a context of a mistrial. If, in fact,
16 if this is in context of a mistrial, that application
17 at this time is denied.

18 I understand we're ready to proceed to
19 Mr. Berger with your case; is that correct?

20 MR. BERGER: That's correct.

21 THE COURT: I did receive caselaw from both
22 the People and from Mr. Berger with regards to these
23 character witnesses. I've gone through all of the
24 caselaw. In fact, I'm fully aware family and friends
25 could constitute an appropriate relevant community with

1 regards to reputation, so that is not an issue in any
2 way, shape, or form, and based on the case provided to
3 me by Mr. Berger from the Third Department, even though
4 it's not a Second Department case, I do find it to be
5 somewhat relevant that from 688 AD3d 1131, People vs.
6 O'Neil, there is something to be said for reputation
7 evidence for an individual charged with endangering the
8 welfare of a child as to that person's reputation in
9 dealing with children.

10 I read all of the People's cases, and I
11 likewise understand and appreciate that truthfulness
12 and veracity are not the elements that are really
13 appropriate in the charges before this Court. I agree
14 with that also, but there is a reputation out there
15 that could be relevant in this circumstance. I'm going
16 to let defense have his opportunity to develop that
17 through reputation evidence. I know everyone is fully
18 aware that they can't go into specific acts, but rather
19 just general reputation within the community. I
20 anticipate everyone will follow that accordingly.

21 So, Mr. Berger, you will be able to present
22 your case starting today.

23 On a scheduling note, it is my intention,
24 depending how far we get today and then what else you
25 tell me is left to do, Mr. Berger, if there is a

1 rebuttal case, I don't know, People, will you tell me,
2 but assuming we're at a point where tomorrow we are
3 faced with ending until next week or summing and
4 charging tomorrow afternoon, it's my intension to have
5 the jurors each be given a single small piece of paper
6 without writing their names or numbers on it, asking
7 them, are you available to be here Friday. If they put
8 a yes, we're going to work, we'll sum and charge and be
9 here Friday. If even one juror writes a no, that ends
10 the discussion because I did advise them when we were
11 picking a jury they could have a four-day weekend.
12 They may have made plans, they might not have. If they
13 are available, we'll make ourselves available, if it
14 seems appropriate. What I'm not going to do is sum and
15 charge on Friday. If we work through Thursday that
16 day, then we'll go to Tuesday for sum and charge.

17 Mr. Berger, do you want to be heard on my
18 intention of inquiring of the jurors?

19 MR. BERGER: No, that's fine.

20 THE COURT: People?

21 MR. PERRI: Your Honor, I had a question
22 about your ruling with respect to the reputation
23 evidence. That in People v. O'Neil, that case where it
24 did involve a coach, allegations that he sexually
25 abused students at least in his charge. The reputation

1 or character trait found to be at issue was specific to
2 that case, that the character trait at issue, your
3 Honor, was that he was professional and highly respects
4 the reputation in dealing with young, at least.

5 What defense counsel is suggesting is the
6 character trait at issue in this case is just a general
7 kindness and towards children, and just a vague general
8 sense. I don't believe in an allegation where there is
9 no aspects to the charge of violence of depravation, of
10 causing actual physical harm or being unkind to a
11 child, that that character at any rate is at issue. In
12 fact, the vast majority of cases in which these
13 allegations are made, the process, the Court is well
14 aware of grooming, of enticing the child of making it
15 seem like it's okay.

16 Turning to the defendant's own statement in
17 this case, it says, a tickle game. He's going to
18 tickle her with his mouth, that the idea that just
19 general kindness is actually at issue with the
20 appearance of kindness is at issue. The People would
21 dispute that the trait at issue is much more narrow as
22 it was in O'Neil, confining to the facts and
23 circumstances of the case, your Honor. And we would
24 ask the Court to rule appropriately.

25 THE COURT: So I understand what you are

1 saying, People, I am confident that Mr. Berger
2 understands the parameters that he needs to put forth
3 in keeping with proper questioning for character
4 evidence. I will certainly take any objections as they
5 come up, and if either of you need to approach in order
6 to explain your objection to the Court, I never denied
7 either of you the ability to do that, so you could
8 certainly approach.

9 I'm going to allow Mr. Berger to go forward
10 with his witnesses, and we will see what they bring
11 forth before the jury and, obviously, People, you will
12 be entitled to your appropriate cross-examination of
13 those individuals.

14 MR. PERRI: Yes, your Honor.

15 THE COURT: Anything else?

16 Your exception to my ruling is noted for the
17 record.

18 MR. PERRI: Thank you.

19 THE COURT: Anything else before we bring in
20 the jury and start with the witness?

21 People, anything else?

22 MR. PERRI: No, your Honor.

23 MR. BERGER: No, your Honor.

24 THE COURT: You are ready to proceed?

25 MR. BERGER: We are.

David Ramos -- Defense - Direct

1160

1 (Whereupon, the jury entered the courtroom.)

2 THE CLERK: Do both sides stipulate all sworn
3 jurors are present?

4 People?

5 MR. PERRI: Yes, your Honor.

6 MR. BERGER: Yes, your Honor.

7 THE COURT: Good morning, everyone. Welcome
8 back. I hope you enjoyed your break here from the
9 courtroom, but we do want to get started right away, so
10 we turn to Mr. Berger.

11 Please call your first witness.

12 MR. BERGER: David Ramos.

13 D A V I D R A M O S, called on behalf of the Defendant,
14 having been duly sworn, took the witness stand and
15 testified as follows:

16 THE CLERK: State your full name, spell your
17 last name, give your county of residence.

18 THE WITNESS: David Ramos, D-A-V-I-D.
19 R-A-M-O-S.

20 THE CLERK: County of residence time.

21 THE WITNESS: Onslow County.

22 THE COURT: Good morning, Mr. Ramos. My name
23 is Teresa Corrigan. I'm the judge in this matter. A
24 couple of rules you need to follow. Please make sure
25 you speak slowly, loudly, clearly. Use the microphone

David Ramos - Defense - Direct

1161

1 if you need to. Wait for an entire question to be
2 asked before you give an answer. If you hear the word
3 objection, I need you to stop speaking until I had a
4 chance to rule. The court reporter can only take down
5 one person speaking at a time. If you hear someone
6 else talking, I need you to not be talking, okay?

7 Go ahead.

8 DIRECT EXAMINATION

9 BY MR. BERGER:

10 Q. Do you know the defendant in this case, Daniel
11 Ramos?

12 A. Yes, sir, he's my father.

13 Q. And are you presently in the military?

14 A. Yes, I am.

15 Q. What branch?

16 A. United States Marine Corps.

17 Q. For how long have you been there?

18 A. Six years.

19 Q. Are you an officer?

20 A. I'm a non-commission officer. I'm a sergeant.

21 Q. Did you grow up in a household with Daniel Ramos?

22 A. Yes, I did.

23 Q. And in the course of your growing up, are you
24 aware of the reputation of your father with respect to his
25 kindness and gentleness towards children?

David Ramos - Defense - Direct

1162

1 MR. PERRI: Objection.

2 THE COURT: Overruled.

3 You may answer.

4 A. Yes, I am.

5 Q. And how are you aware of that?

6 A. Family members always talking about him, friends
7 and all of that.

8 Q. Give us an example, tell us how it is you know of
9 his reputation and gentleness towards children.

10 A. Yes. I told my mother that my wife is pregnant.
11 My mother was telling me how much --

12 MR. PERRI: Objection.

13 THE COURT: Sustained.

14 Q. Tell us what you heard with respect to his
15 reputation.

16 A. How he is always so kind, he's gentle, he's fair,
17 he's firm, and discipline-wise, and basically, he's just
18 kind of gentle. That's always everything they tell me about
19 my father and how funny he is.

20 Q. Are you aware of his gentleness and kindness?

21 A. Of course, I am.

22 Q. Let me ask you this: Are there other occurrences
23 in which you heard of people talk about his reputation for
24 kindness and gentleness towards children?

25 A. Yes, many times.

David Ramos - Defense - Direct

1163

1 Q. Could you tell us those other instances, if you
2 can recall?

3 A. Yes. When I used to live in my old apartment,
4 downstairs, who are now my Godparents, they have two
5 daughters and a son, and they always mentioned how nice my
6 father is with their kids.

7 MR. PERRI: Objection.

8 THE COURT: Sustained as to what they said.

9 A. How he is with kids --

10 THE COURT: Sustained. You can't answer.

11 Q. Just tell us about what you heard them say with
12 respect to his reputation.

13 A. He's always funny, caring, gentle, and a great dad
14 from seeing everything.

15 Q. Are there other instances in which you recall
16 other people talking about his reputation?

17 A. Yes, and another one is an old family friend, they
18 say the same thing no matter. He's always a great gentle
19 guy, he's never been bad to any kids or anything.

20 Q. Have you ever heard any negative reputation with
21 respect to his kindness and gentleness towards children?

22 A. No, never.

23 MR. BERGER: Nothing further. Thank you.

24 THE COURT: Cross-examination.

25 CROSS-EXAMINATION

1 BY MR. PERRI:

2 Q. Mr. Ramos, you testified you currently live in
3 Onslow County?

4 A. Yes.

5 Q. Where is Onslow located?

6 A. Jacksonville, North Carolina.

7 Q. How long have you lived in North Carolina?

8 A. Four about four years.

9 Q. Before living in North Carolina for the past four
10 years, where else have you lived?

11 A. I've been in and out of different stations.
12 Before that I lived in my parent's house.

13 Q. When was that, when you lived at your parent's
14 house?

15 A. From eighteen years and younger.

16 Q. How old are you now?

17 A. Twenty-four.

18 Q. That was approximately six years ago you lived at
19 your parent's house?

20 A. Yes.

21 Q. Is it fair to say you don't have daily
22 interactions with your father or his community where he
23 lives currently?

24 A. I speak to him every time on the phone, calling
25 home, talking to my mom and dad before.

1 Q. Besides from speaking to your mother and your
2 father, being the defendant living down in North Carolina,
3 you don't have regular interactions with the members of
4 community where you grew up, correct?

5 A. No.

6 THE COURT: I didn't hear your answer.

7 THE WITNESS: I said, no.

8 Q. So all of the reputations that you are discussing
9 and talking about with respect to your father's reputation,
10 is that based on statements and meetings that occurred in
11 the past?

12 A. Besides the one with my mother saying not that
13 long ago.

14 Q. That was a conversation you had with your mother
15 about your father's reputation?

16 A. Yes.

17 Q. Were all of the people you were talking about that
18 have an opinion about your father's reputation for the
19 kindness and gentleness with children, were all of those
20 members of your family?

21 A. Family friends.

22 Q. Were there any people you were talking about that
23 aren't friends and family of your father?

24 A. No, no family friends.

25 Q. Approximately, how many people are you talking

S. Ramos - Defense - Direct

1166

1 about?

2 A. I would say, four in total.

3 Q. So, the reputation that you are discussing and
4 presenting before the jury, is the reputation your father
5 has amongst four people who are friends and family?

6 A. There is many more. I can keep going on.

7 Q. As far as what you testified to before the jury,
8 you are talking about conversations about four people who
9 are friends and family of your father?

10 A. Yes.

11 Q. You love your father?

12 A. Love him to death.

13 Q. You would do anything for him?

14 A. Yes, I would.

15 MR. PERRI: Nothing, further, your Honor.

16 THE COURT: Thank you.

17 Anything on redirect?

18 MR. BERGER: No, your Honor.

19 THE COURT: Thank you very much. You may
20 step down.

21 Please call your next witness.

22 MR. BERGER: Stephany Ramos.

23 S T E P H A N Y F I G U E R O A R A M O S, called on
24 behalf of the Defendant, having been duly sworn, took
25 the witness stand and testified as follows:

S. Ramos - Defense - Direct

1167

1 THE CLERK: Please state your name, spell
2 your last name, and give your county of residence.

3 THE WITNESS: Stephany Figueroa Ramos,
4 Jacksonville, North Carolina. S-T-E-P-H-A-N-Y,
5 F-I-G-U-E-R-O-A, R-A-M-O-S.

6 THE COURT: Ms. Figueroa Ramos, my name is
7 Teresa Corrigan, and I'm the judge in this matter. I
8 have a couple of instructions for you. One, please
9 speak slowly, clearly, loudly. Use the microphone if
10 you need to. Two, it's important you wait for an
11 entire question to be asked before you give your
12 answer. If you hear the word objection, I need you to
13 stop speaking and give me a chance to rule.

14 It's important to remember the court reporter
15 can only take down one person speaking at a time. If
16 you hear someone speaking, I need you to not be
17 talking.

18 You may inquire.

19 DIRECT EXAMINATION

20 BY MR. BERGER:

21 Q. Ms. Ramos, do you know David Ramos?

22 A. I do.

23 Q. How do you know him?

24 A. He's my husband.

25 Q. So Daniel Ramos is your father-in-law?

1 A. Yes.

2 Q. And are you in the military?

3 A. I am.

4 Q. Where are you stationed?

5 A. North Carolina.

6 Q. What part of the military?

7 A. United States Army Reserve.

8 Q. Did you recently have a child?

9 A. I did.

10 Q. Are you aware of the reputation of the defendant,
11 Daniel Ramos, for kindness and gentleness towards children?

12 A. I am most certainly.

13 Q. Could you tell us how you are aware of that
14 reputation?

15 A. I was first aware of it back when I first met his
16 son and we started dating. It was around Christmastime. I
17 remember the Christmas tree being up. We were at the family
18 gathering. I was going to meet his family for the first
19 time officially, and it was his aunt, uncles, cousin, his
20 little cousin and a few family friends gathered around.
21 They started talking about his father, his mom as well.
22 What came up was the --

23 Q. When you say, his father, you are referring to?

24 A. Daniel Ramos.

25 Q. Go ahead.

S. Ramos - Defense - Direct

1169

1 A. The reason it came up, David was playing with his
2 little cousin and kind of telling me how David was, but then
3 he said he gets all of his character traits from his dad,
4 which to you, if you meet his father, gentle kind, great
5 with kids. What do you see in him? He's funny, and later
6 that evening I met his dad. Exactly, what they told me.
7 Honestly, very few people I have seen like that.

8 MR. PERRI: Objection.

9 THE COURT: Overruled. We'll let it stand.

10 Q. Were there any other instances in which you heard
11 of his reputation with respect to kindness and gentleness
12 towards children?

13 A. Yeah. I could think of another. It was one time
14 we were out playing soccer, right, with the family. We
15 always go out together, to go to soccer at the field by the
16 high school. We were all there, a couple of family friends.
17 Other friends were there as well, and kind of mentioned how
18 good he was teaching the kids there how to play soccer, play
19 together as a team, obedience behind the game. How to rely
20 and trust each other, and that was pretty much when they
21 told me, once again, they compared him and his dad and how
22 they are with kids and looking forward to that because, you
23 know, that is something I want my daughter to be brought up
24 in, with a good husband and someone who cares and good
25 traits from my father-in-law.

kmm

S. Ramos - Defense - Direct

1170

1 MR. PERRI: Objection.

2 THE COURT: Sustained. Just the last part of
3 that is stricken. Just the very last phrase is
4 stricken from the record.

5 MR. BERGER: Okay.

6 Q. Ms. Ramos, anything else that you can recall at
7 this time other than those two instances?

8 A. I can think of moments where I heard it. I'm just
9 trying to recall the exact places.

10 Q. You can't recall it now?

11 A. It was a family dinner. It was during the summer
12 of last year. It was right when I was pregnant. Once
13 again, we were talking about traits, that we hoped she would
14 have and who she would get it from. That's where
15 Mr. Daniel, my father-in-law's name was brought, funny guy,
16 extremely funny, sweet person, you know. Very kind. They
17 were just kind of talking in reference to how he would be
18 with her. Well, then I found out I was having a little
19 girl, how he would be with her, and how they would get along
20 and how compatible, I guess, and that is probably the
21 instance.

22 Q. So, it's fair to say, during the past six years
23 that David has been in the military, you have had occasions
24 where you are spending time with the family within the last
25 six years?

S. Ramos - Defense - Cross

1171

1 A. Well, I've been with David for the last three
2 years, going on four years, so I wasn't there for David's
3 entire military career. For the part I've been in there,
4 yes. I've been included ever since then. Even though it's
5 a long distance relationship, I'm very close with his
6 family.

7 THE COURT: Cross-examination, please.

8 MR. PERRI: One moment, your Honor.

9 THE COURT: Take your time.

10 CROSS-EXAMINATION

11 BY MR. PERRI:

12 Q. What rank are you? What is your current rank?

13 A. Private first class.

14 Q. You said currently you live in Jacksonville, North
15 Carolina?

16 A. Yes.

17 Q. How long of have you lived in Jacksonville, North
18 Carolina?

19 A. About two years.

20 Q. Before Jacksonville, where did you live?

21 A. Long Island, New York. Valley Stream.

22 Q. When did you meet your husband?

23 A. In 2011.

24 Q. And did you know him before then?

25 A. No.

1 Q. Did you know the defendant before 2011?

2 A. No.

3 Q. You have known the defendant for approximately
4 three to four years?

5 A. Correct.

6 Q. You testified about when you first met his family
7 at Christmas, the family gathering, and there was a
8 discussion about the defendant's reputation at that
9 gathering. You testified that there was aunt and uncles,
10 and a couple of family friends. Was that the approximate
11 number of adults at the family gathering other than your --

12 A. Not at the gathering itself. I was mentioning the
13 surroundings on that couch.

14 Q. Were those the people you were talking with?

15 A. Yes, on the couch.

16 Q. So, the conversation about the reputation of the
17 defendant involved approximately four people?

18 A. Including David, five.

19 Q. And there were other family or friends, correct?

20 A. Family and friends, yes.

21 Q. And you testified about a second incident at a
22 soccer game; where was that soccer practice?

23 A. It was a soccer gathering between family and
24 friends.

25 Q. Where was that?

1 A. At Uniondale High School, back park.

2 Q. How many people were there?

3 A. The team was probably going to be eleven, eleven,
4 usually. We usually combined family and friends. It's a
5 big family.

6 Q. Were those your friends or David's friends.

7 A. Both.

8 Q. How many people were involved in the conversation
9 about whether or not the defendant had reputation for
10 kindness and gentleness towards children at the soccer game?

11 A. I'm going to say about seven.

12 Q. And were these members of the defendant's family?

13 A. Some.

14 Q. And were they friends of the defendant?

15 A. They're family, so, yes.

16 Q. You also testified about a family dinner when you
17 were pregnant where the conversation of whether or not the
18 defendant was kind and gentle towards children came up;
19 where was that family dinner?

20 A. At the defendant's house.

21 Q. And who was present at that dinner?

22 A. It was his wife, his son, family friend, Jose,
23 aunt from upstairs, and his little cousin Chris.

24 Q. So the conversation about the reputation of the
25 defendant, again, here comprised of you, your husband, the

1 defendant's wife, family friend and aunt?

2 A. Yes, and a little cousin.

3 Q. How old is the cousin?

4 A. He just turned eight, actually.

5 Q. What year did this happen in?

6 A. Last year, the summer of last year.

7 Q. You don't live in Nassau County, correct?

8 A. No, Jacksonville.

9 Q. You don't have daily interactions with anyone that
10 sees -- you don't have daily interactions in person with
11 anyone interacting with the defendant, correct?

12 A. I'm sorry?

13 Q. Do you, on a daily basis, interact with people the
14 defendant is interacting with; I'm talking about in person,
15 both of you?

16 A. No, we only come to visit when we have a leave.

17 Q. How often do you have a leave?

18 A. Recently, since the baby, it hasn't been often.
19 Maybe once, twice a year.

20 Q. The reputation you are discussing is predominantly
21 based on visits to New York, that has happened one or two --
22 twice a year?

23 A. Within the last year that I've been away from New
24 York.

25 Q. Before these last two visits, how long has it been

S. Ramos - Defense - Redirect

1175

1 since you have been back to New York?

2 A. The last two visits were this year, twice last
3 year, and the year before that I was still here.

4 Q. Ms. Ramos, you and your husband have been both in
5 court here during trial?

6 A. Correct.

7 Q. You have been here in support of the defendant?

8 A. Correct.

9 MR. PERRI: Nothing further, your Honor.

10 Thank you.

11 THE COURT: Any redirect?

12 MR. BERGER: One question.

13 REDIRECT EXAMINATION

14 BY MR. BERGER:

15 Q. Have you ever heard any negative reputation with
16 respect to the defendant being kindness and gentleness
17 towards children?

18 MR. PERRI: Objection.

19 THE COURT: There's an objection?

20 MR. PERRI: Yes.

21 THE COURT: Objection sustained. Outside the
22 scope.

23 MR. BERGER: Nothing further.

24 THE COURT: You may step down. Please be
25 careful. It's two steps. Thank you.

C. Hernandez - Defense - Direct 1176

1 Please call your next witness.

2 MR. BERGER: Christy Hernandez.

3 C H R I S T Y H E R N A N D E S, called on behalf of the
4 Defendant, having been duly sworn, took the witness
5 stand and testified as follows:

6 THE CLERK: In a loud, clear voice, state
7 your name, spelling your full name, and give your
8 county of residence.

9 THE WITNESS: Christy Hernandez,
10 C-H-R-I-S-T-Y, H-E-R-N-A-N-D-E-S. Nassau County.

11 THE COURT: Good morning. My name is Teresa
12 Corrigan, and I'm the judge in this matter. Just a
13 couple of rules for you. First, I need to make sure
14 you speak slowly, loudly, clearly, use the mic, if you
15 need to. Wait for an entire question to be asked
16 before you give your answer. If you hear the word
17 objection, I need you to stop speaking and give me a
18 chance to rule, and just remember, the court reporter
19 can only take down one person speaking at a time. If
20 you hear anyone else speaking, I need you to not be
21 speaking, okay.

22 You may inquire.

23 DIRECT EXAMINATION

24 BY MR. BERGER:

25 Q. Ms. Hernandez, do you live in the County of

C. Hernandez - Defense - Direct

1177

1 Nassau?

2 A. Yes.

3 Q. Are you employed?

4 A. Yes.

5 Q. What do you do?

6 A. Medical billing.

7 Q. I'm sorry?

8 A. Medical billing.

9 Q. Where do you do that?

10 A. Bay Orthopedic in Westbury.

11 Q. Do you know Daniel Ramos?

12 A. I do.

13 Q. Do you know his family?

14 A. I do.

15 Q. How long have you known them?

16 A. Since about 2008.

17 Q. So, approximately, about seven years or something?

18 A. Yes.

19 Q. Have you spent time with the family residence?

20 A. Not recently, but I have.

21 Q. Are you aware of the reputation from the defendant
22 with respect to his kindness and gentleness towards
23 children?

24 A. Yes. Yes.

25 Q. How are you so aware?

C. Hernandez - Defense - Direct

1178

1 A. Well, I lived in his house for about two years,
2 and I have my own children that spend time with him and his
3 family.

4 Q. And what is that reputation with respect to
5 kindness and gentleness towards children?

6 MR. PERRI: Objection. May we approach?

7 (Whereupon, there was a sidebar discussion
8 with counsel and the Court, as follows:)

9 MR. PERRI: The foundation that this witness
10 has laid is based on her personal experience of having
11 lived in the house and having left her children in care
12 of the defendant. Although, personal experiences and
13 opinions must go under the federal rules of evidence,
14 it is not admissible in New York State. I object to
15 the witness.

16 MR. BERGER: I agree with everything he said.
17 I'm going to ask her, has she heard of the reputation,
18 not her own personal experience.

19 THE COURT: I will give you a chance to
20 develop that.

21 MR. PERRI: Thank you.

22 (Whereupon, the proceedings resumed.)

23 Q. You say you are aware of the reputation of the
24 defendant with respect to kindness and gentleness towards
25 children?

C. Hernandez - Defense - Direct

1179

1 A. Yes.

2 Q. How are you aware of that?

3 A. I lived at his house for about two years, so
4 myself and my children spend time with him.

5 Q. And did you hear other people talk about his
6 reputation with respect to kindness and gentleness towards
7 children?

8 A. Yes.

9 Q. Give us an example of what you heard.

10 A. Sometimes at our family gatherings we all get
11 together and his sister-in-law speaks of kindness about him
12 with children because she has a son that spends a lot of
13 time --

14 MR. PERRI: Objection.

15 THE COURT: Overruled. I'll let her complete
16 the answer. Finish.

17 A. So they would all spend time together. So, the
18 sister-in-law's son would spend time with Mr. Ramos as well.
19 So, they would always speak good things about him.

20 Q. They would talk about his reputation?

21 A. Correct, with the kids.

22 Q. So, can you recall anything else?

23 A. My children would sometimes speak good things
24 about him as well.

25 MR. PERRI: Objection.

C. Hernandez - Defense - Cross

1180

1 THE COURT: Sustained.

2 Q. Not so much the good things, okay. I'm asking
3 about what you heard other people say with respect to his
4 reputation.

5 A. That he was kind and gentle with children.

6 Q. And you heard that?

7 A. Yes.

8 MR. BERGER: Thank you.

9 Q. Have you ever heard anything negative about his
10 reputation as to kindness and gentleness with children?

11 A. No.

12 MR. BERGER: Thank you.

13 THE COURT: Cross-examination.

14 MR. PERRI: Thank you, your Honor.

15 CROSS-EXAMINATION

16 BY MR. PERRI:

17 Q. Ms. Hernandez, how do you know the defendant?

18 A. I dated his son.

19 Q. And is that David?

20 A. Carlos.

21 Q. When did you date Carlos?

22 A. In 2008.

23 Q. Are you still close with the defendant and his
24 family?

25 A. No.

1 Q. Have you recently been to the residence where the
2 family lives?

3 A. About, maybe, two or three months ago.

4 Q. If you are not close, why were you at the home two
5 or three months ago?

6 A. Ms. Ramos's wife called me, wanted to speak to me.

7 Q. She wanted to speak to you about the case?

8 A. Yes.

9 Q. She wanted to speak to you about testifying on
10 behalf of the lawyer, defendant?

11 A. She asked me to call the lawyer, Mr. Berger, give
12 him a call.

13 Q. Before that visit over two, three months ago,
14 specifically to discuss the case, when was the last time you
15 were over the Ramos household?

16 A. About 2011.

17 Q. Approximately, four years ago?

18 A. Yes.

19 Q. Since 2011, did you interact with the defendant or
20 his family on a regular basis?

21 A. Ms. Ramos's wife, I call her for her birthday or
22 send her a Mother's Day text.

23 Q. Other than birthday or Mother's Day text, do you
24 interact with them on a daily basis?

25 A. No.

1 Q. Do you hang out with their friends or associates
2 on a daily basis?

3 A. No.

4 Q. And you testified that other people talk about the
5 defendant's kindness and gentleness towards children. Do
6 you know where any of those -- when, specifically, any of
7 those discussions took place?

8 A. I can't give you specific dates, because this was
9 between 2008 and 2011, but I know it was in the house.

10 Q. Do you know who was present?

11 A. It was Mr. Ramos's wife, Mr. Ramos's
12 sister-in-law, the children, and I believe that's it.

13 Q. So, the people that we're discussing the
14 defendant's reputation were yourself, the defendant's wife
15 and his sister-in-law?

16 A. Yes.

17 MR. PERRI: Nothing further, your Honor.

18 THE COURT: Any redirect?

19 MR. BERGER: No, your Honor.

20 THE COURT: You may step down. Be careful.

21 It's two steps.

22 Approach. Off the record.

23 (Whereupon, there was a discussion held
24 off-the-record.)

25 THE COURT: All right, ladies and gentlemen,

1 you are going to get a little bit of a break today.
2 It's a short day. We're not finished yet with what
3 needs to be presented to you. I do need you all back
4 here tomorrow morning at 10:00 a.m. sharp.

5 Please remember to keep an open mind
6 throughout the trial. Do not discuss the case amongst
7 yourselves or with anyone else during the trial. Do
8 not permit anyone to discuss the case in your presence.
9 Do not talk to the lawyers, witnesses, or about the
10 defendant, about anything during at trial.

11 Do not visit or view the alleged area or any
12 other place involved in the case, and if there is any
13 news coverage of the case, do not read, view, or listen
14 to any accounts or discussions of the case reported by
15 the news media.

16 Do not attempt to research any fact, issue or
17 law related to this case, whether by discussion with
18 others, by research in the library, or on the Internet,
19 or any other means or source.

20 Enjoy the rest of your day. The sun is
21 supposed to shine the rest of the afternoon so try to
22 enjoy it.

23 See you tomorrow morning at 9:00 a.m.

24 (Whereupon, the jury exited the courtroom.)

25 THE COURT: I do want to do the charge

Proceedings

1184

1 conference with the attorneys. Please go in the back
2 to speak to Kristin. Depending how long it takes,
3 we'll either go back on the record with the charge
4 conference this morning, so we can have the proper
5 record made or do it this afternoon when you are both
6 in agreement.

7 Anything for the record before we shut it out
8 for the day?

9 MR. BERGER: No.

10 THE COURT: Thank you very much.

11 (Whereupon, the trial was adjourned to May
12 20, 2015.)

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1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 43

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 742N/14

5 -against- :

6 DANIEL RAMOS, :

7 Defendant. : Jury Trial

-----X

8 May 20, 2015
262 Old Country Road
9 Mineola, New York

10

B E F O R E:

11

12 HONORABLE TERESA K. CORRIGAN,
Acting Supreme Court Justice

13

A P P E A R A N C E S:

14

(As Previously Noted)

15

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* * * * *

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19 THE CLERK: Case on trial continued,
20 Indictment Number 742N of 2014, People of the State of
21 New York vs. Daniel Ramos.

22 Let the record reflect all parties are
23 present. The jury is not present at this time.

24 Spanish interpreter present.

25 Please put your appearances on the record.

Proceedings

1186

1 THE INTERPRETER: Carmen Knight.

2 THE COURT: People, ready to proceed?

3 MR. PERRI: Yes.

4 THE CLERK: Defense counsel ready?

5 MR. BERGER: Yes.

6 THE COURT: Anything for the record?

7 MR. PERRI: People have an application to
8 allow their expert witness, Christopher Chillseyzn to
9 be present in the courtroom during the testimony of the
10 defendant's expert. The People believe this is
11 necessary to allow him to aid in advising the
12 prosecution with respect to the cross-examination of
13 this expert witness, and we feel were it necessary and
14 appropriate for us to recall him or a member of his
15 office as a rebuttal witness, this would expedite the
16 process.

17 THE COURT: Do you want to be heard?

18 MR. BERGER: I object to that. We ordered
19 the testimony of Dr. Chillseyzn. We provided that to
20 our expert. The People can do the same thing.

21 THE COURT: The application is going to be
22 granted. I will allow him to sit in at this time.
23 It's allowed by caselaw. It's allowed within the Court
24 rules, so I will allow it.

25 Anything else, for the record?

Proceedings

1187

1 MR. PERRI: No, your Honor.

2 THE COURT: Mr. Berger, anything for the
3 record?

4 MR. BERGER: No, your Honor.

5 With respect to the previous application, if
6 Mr. Chillseyzn is going to be called as a rebuttal, we
7 ask it be taken out of order because our witness will
8 not be here after today, and he will not be able to sit
9 and listen to what Mr. Chillseyzn has to say, if
10 anything.

11 THE COURT: All right. We'll cross that
12 bridge when we get to it. I don't think that will be a
13 problem. Let's worry about it if I allow the rebuttal.

14 MR. BERGER: Fine.

15 THE COURT: With regards to what I said
16 yesterday, it was going to be the Court's request of
17 the jury as to their availability for Friday. Several
18 members of the jury are not available Friday. I will
19 not sum and charge Thursday, correct. So that means
20 sum and charge at this time looks to be happening next
21 Tuesday.

22 MR. PERRI: Yes, your Honor. Thank you.

23 (Whereupon, the jury entered the courtroom.)

24 THE CLERK: Do both sides stipulate all sworn
25 jurors are present?

Dr. Reich - Defense - Direct

1188

1 MR. PERRI: Yes, your Honor.

2 THE CLERK: Defense counsel?

3 MR. BERGER: Yes, your Honor.

4 THE COURT: Good morning, everyone. Welcome
5 back. I hope you enjoyed your evening and afternoon
6 yesterday. We'll get started.

7 Mr. Berger, please call your next witness.

8 MR. BERGER: I call Dr. Karl Reich.

9 K A R L R E I C H, Doctor, called on behalf of the
10 Defendant, having been duly sworn, took the witness
11 stand and testified as follows:

12 THE CLERK: In a loud, clear voice, state
13 your name, spell your first and last name and give
14 your county of residence.

15 THE WITNESS: Karl Reich, R-E-I-C-H, K-A-R-L.
16 Middle initial A, and I live in Cook County, Illinois.

17 THE COURT: Doctor, just a couple of rules
18 for you. My name is Teresa Corrigan. I am the judge
19 in this matter. Please make sure when you testify you
20 speak slowly, loudly, clearly. Use the mic if you need
21 to. Wait for an entire question to be asked before you
22 give your answer. If you hear somebody say the word
23 objection, stop speaking and give me a chance to rule
24 and then you will know whether or not you could answer
25 the question.

Dr. Reich - Defense - Direct

1189

1 Remember, the court reporter can only take
2 down one person at a time. If you hear someone else
3 speaking, I would ask you not to speak at the same
4 time.

5 THE WITNESS: Thank you.

6 DIRECT EXAMINATION

7 BY MR. BERGER:

8 Q. Dr. Reich, what is your occupation?

9 A. I'm a scientist, and I work at a small independent
10 forensic laboratory.

11 Q. And that laboratory, what does it do?

12 A. We do forensic analysis, but only for DNA. There
13 are number of different fields in forensics, but we only
14 study or work with the DNA part. We don't do ballistics. I
15 don't do arson. We don't document. We don't do
16 fingerprints. We just do DNA.

17 Q. Does your lab have anything to do with the
18 development of testing with respect to saliva?

19 A. Yes. So our laboratory does a variety of things
20 related to forensic DNA, and one of the things we have done
21 is develop a series of tests which other forensic labs use,
22 and one of those tests is specifically a test for saliva.

23 Q. Is one of the labs that uses your test in Nassau
24 County?

25 A. I believe the medical examiner in Nassau County is

Dr. Reich - Defense - Direct

1190

1 one of the forensic labs that orders our test and uses them
2 to examine evidence.

3 Q. Doctor, what is your education?

4 A. I have an undergraduate degree in chemistry from
5 Cornell, and then I have a graduate degree in molecular
6 biology from UCLA.

7 Q. And any other education?

8 A. I've done two post doctoral fellowships. That's
9 research projects after you get your doctorate. I have one
10 of those from the Institute Pester in Paris, and another one
11 from Stanford.

12 Q. What is your professional experience?

13 A. Well, I was trained as a chemist, as an
14 undergraduate, and then I study molecular biology as a
15 graduate student. And professionally, I worked with
16 molecular biology, which is the study of very small things
17 that are biology for twenty-five or thirty years, depending
18 upon how you want to count it.

19 Q. And could you tell us your professional experience
20 with respect to your work in biosciences?

21 A. So, one of the places I worked was Abbot
22 Laboratory, and specifically, I worked in their
23 pharmaceutical division. And when I left Abbot there were a
24 couple of physicians who wanted to try and develop a drug,
25 and so they hired me to help them do that. It was a very

1 interesting project. It was a virtual pharmaceutical
2 company. We outsourced all of the work that used to be done
3 at Abbot, and we outsourced them all to try them help
4 develop a drug.

5 Q. Can you tell us what you have done with Integrated
6 Genomics?

7 A. Integrated genomics was a biotech in the Chicago
8 area, and they were very interested in trying to use
9 computers and sequence analysis to understand the genetics
10 of microorganisms, and how those microorganisms made things
11 of commercial interest. So it turns out that many of the
12 things that we buy and sell and use come from small
13 microorganisms, and they were interested in trying to expand
14 that. So all the antibiotics, for example, come from
15 microorganisms, and they were trying to rationalize that
16 production.

17 Q. Were you involved in attempting to develop new
18 antibiotics as well?

19 A. Yes. So my work at Abbot was actually involved in
20 resistance, which is what happens when you -- when the
21 antibiotics no longer work. Absolutely, they were very
22 interested in that.

23 Q. Is that the same work you did on DNA at Integrated
24 Genomics Institute in Chicago?

25 A. No, that was another biotech I worked with. That

Dr. Reich - Defense - Direct

1192

1 was my first introduction to using molecular biology for
2 human genetics, and the DNA and DNA Genomics Institute was
3 biotech downtown that used the early techniques for forensic
4 DNA, and I started working there just after I left
5 Integrated Genomics.

6 Q. You were involved in the early stages of the
7 development of DNA testing?

8 A. Yes. So the modern or more recent methods, which
9 I'm sure you will hear about today, they didn't develop sort
10 of out of nothing. They came from earlier techniques and at
11 that time that's all that there was, so I worked with those
12 early methods.

13 Q. Could you tell us what you did with respect to
14 Abbot Labs as far as DNA genetics is concerned?

15 A. It was all, in fact, related to the genetics. So,
16 Abbot had a program called the genomics program, and they
17 hired a group of us to try and make use of sequence data,
18 and to develop projects related to that, and so I was
19 working with microorganisms and resistance mostly to try and
20 overcome resistance.

21 Q. Could you tell us what you did with respect to the
22 Stanford University School of Medicine?

23 A. Certainly, I worked for the Chief of Infectious
24 Diseases for a number of years, I think six, and I was
25 interested -- he had me work on what happens to disease

Dr. Reich - Defense - Direct

1193

1 causing organisms when they are not in people. So, some
2 organisms only live in people and so they can't survive
3 outside of us, but there are many disease causing organisms
4 that live naturally in the environment. And so, my boss at
5 the time was very interested in how those organisms survived
6 outside of people and that was one of the things I worked
7 on.

8 Q. Did you do a post-doctoral fellowship in the
9 laboratory of Dr. Scholnick?

10 A. Yes. Dr. Scholnick was the Chief of Infectious
11 Disease at Stanford, and I worked for him for six years.
12 He was a physician, not technically a research scientist,
13 and I was one of the few research scientists in his group.

14 Q. You were involved at the Institute of Louis
15 Pastor?

16 A. Yes. So I spent two years at the Institute Pastor
17 in Paris, and there I worked on another group of organisms
18 that contaminated food, and it is still a problem. I still
19 read about those organisms in the paper from time to time,
20 and so I worked on several of those organisms.

21 Q. Could you tell us what you did at UCLA in Los
22 Angeles in the Department of Biological Chemistry?

23 A. I was lab technician for two-and-a-half years, and
24 there I worked on the chemistry of the DNA. Dr. Sigmond was
25 my boss there, and he had discovered a very unusual

1 chemistry that was related to DNA, and I studied that
2 reaction.

3 Q. That was back in the -- do you remember the years
4 of that?

5 A. It must have been 1979 to 1982, I believe.

6 Q. Could you tell us what you did with respect to
7 Harvard Medical School?

8 A. So, for two years, going back, I worked as a
9 technician in the Department of Neurobiology there, and
10 there I studied, I helped the lab study the vision of cats.
11 So cats have very sharp eyesight and scientists there wanted
12 to figure out how cats could see. It was very interesting.

13 Q. Have you been published?

14 A. Yes. So I have been able to public Peer reviewed
15 articles, as it is called, in a number of different fields,
16 and I have published, I don't know, maybe 30 papers or
17 something.

18 Q. Have you published with respect to DNA and DNA
19 analysis?

20 A. Yes. So that's, of course, more recent works. It
21 has to do with my working in a forensic lab now. We have
22 published papers on all of the tests we have developed in
23 our own laboratory.

24 Q. And how many publications have you had with
25 respect to DNA in related areas?

Dr. Reich - Defense - Direct

1195

1 A. Maybe six or seven. I don't recall, six, seven or
2 eight. Something like that.

3 Q. And have you engaged in training individuals with
4 respect to DNA?

5 A. Yes. So, as I mentioned earlier, we developed
6 some new tests for forensic laboratories, in particular, and
7 so we have been asked, maybe seven or eight times, to run
8 workshops for other forensic labs for law enforcement who
9 work in the field, about how to use these tests, how to make
10 the best use of them, how to handle evidence, how to make
11 extracts to run our tests with. There must be six or seven
12 of those, maybe, that I have done workshops for at forensic
13 meetings. That's typically when we have them, and so, there
14 are analysts from labs and law enforcement who attend.

15 Q. And so you have taught law enforcement about DNA
16 and techniques to be used?

17 A. Correct, as related to our products, that's right.

18 Q. Doctor, have you been qualified as an expert on
19 DNA in other jurisdictions as well as New York?

20 A. I have.

21 Q. Do you remember them all or --

22 A. I could try and list them. Certainly, Illinois,
23 in a number of different counties. Wisconsin,
24 Massachusetts, New York, Indiana, Michigan, I think South
25 Dakota might be a more recent one, and that's both in State

Dr. Reich - Defense - Direct

1196

1 Court and in Federal Court, and as well as on civil matters
2 and criminal cases.

3 Q. How about Florida?

4 A. Yes, excuse me, Florida.

5 Q. Missouri, Maryland?

6 A. Missouri, St. Louis.

7 Q. New Mexico?

8 A. New Mexico multiple times.

9 Q. New York?

10 A. New York, Albany, at least once, anyway.

11 Q. Ohio?

12 A. Yes. I forgot about that.

13 Q. Washington DC?

14 A. Cleveland. Washington DC is Federal Court. Yes.

15 Q. How about Dublin, Ireland?

16 A. I was even involved in an international case. I
17 had to go to Ireland to testify.

18 MR. BERGER: I ask the Court to recognize
19 Dr. Reich as an expert.

20 THE COURT: What field are you looking for,
21 counselor?

22 MR. BERGER: The field of DNA analysis.

23 THE COURT: Do the People want to be heard?

24 MR. PERRI: No, your Honor.

25 THE COURT: You are declared an expert in the

Dr. Reich - Defense - Direct

1197

1 field of DNA analysis. You may continue.

2 THE WITNESS: Thank you, your Honor.

3 Q. Doctor, what documents did you read prior to your
4 testimony here today?

5 A. For this case I was provided a fairly complete
6 case file and that includes all of the laboratory reports
7 issued by the medical examiner. There's also a fairly thick
8 pile of supporting materials that detail the lab work that
9 was performed and that includes worksheets, bench notes,
10 electropherogram, chain of custody documentation; more
11 worksheets, documents that describe the lot numbers of all
12 of the materials that are used. That's pretty much what is
13 in what is called the discovery packet that is provided by
14 the laboratory.

15 Q. Let me show you what was marked People's 5 and
16 People's 6. I ask you if you have been provided copies of
17 those documents?

18 A. Of course, I comb through this pile of paper, but
19 it looks exactly like the case file I was provided and I
20 brought with me; and that's People's Exhibit 5. And
21 People's Exhibit 6, is more of that similar documentation,
22 so I'm going to assume that it is essentially the same
23 material I was provided.

24 Q. Doctor, did you also have occasion to read
25 testimony of Mr. Chillseyzn, who testified with respect to

kmm

Dr. Reich - Defense - Direct

1198

1 DNA in this courtroom?

2 A. Yes, your Honor's office provided me with a trial
3 transcript of the state's analysis. The state's analysis,
4 pardon me, when he testified in this case.

5 Q. Take a look at what was marked as People's 4 in
6 evidence. They'll give you some gloves to put on.

7 A. Certainly.

8 Q. I will --

9 A. I will be honest, I don't like handling evidence
10 that is not in the laboratory. I know what happens in
11 courtrooms, but I will do so. This is not how evidence is
12 handled in the laboratory, but in the courtrooms, this is
13 what we do. Do you wish me to open the box?

14 Q. Take a look at what you see there. I believe you
15 will see a pair of underwear.

16 A. The box has a number of evidence envelopes, many
17 of which are sealed with tampered evidence tape. Some of
18 the envelopes are open. Is there one, in particular, you
19 want me to search for?

20 Q. One of the envelopes should be labeled underwear.

21 A. This is oral. This is underwear.

22 Q. Take a look at that.

23 A. So the envelope has been sealed on two sides, but
24 there is one side that is open. This is an item of
25 evidence. There is a magic marker writing on the inside

Dr. Reich - Defense - Direct

1199

1 with the case number, and as we can see, a large section of
2 the underwear has been cut off, cut out. I assume this
3 matches the bench notes of the material that was tested for
4 it.

5 Q. I wanted you to take a look at that, examine it
6 for whatever you may need it for. When you are finished,
7 put it back, please.

8 Dr. Reich, you had an opportunity to look at the
9 summary report, have you not?

10 A. Yes. So the laboratory reports that are generated
11 by forensic laboratories, generally have a short description
12 of the work that was done and then a summary or series of
13 conclusions that the lab wishes to draw.

14 Q. What is an electropherogram?

15 A. An electropherogram is basically a screen shot
16 from a piece of software that analyzes the final steps of
17 obtaining a DNA profile, and it is a piece of paper which
18 has peaks and spikes on it which allows an analyst to try
19 and determine what the DNA results are from something they
20 have analyzed and put through the laboratory.

21 Q. Is it something similar to an EKG, when you get a
22 read out and the peaks tell you they observe something?

23 A. Yes. If we will call it that, we can say it's
24 read out. That lets an analyst figure out what is on it.
25 An EKG measures electrical outputs and this measures from a

Dr. Reich - Defense - Direct

1200

1 machine but similar.

2 Q. And there is a software that goes in to create an
3 electropherogram?

4 A. Absolutely. There are several pieces of software
5 that have to be used.

6 Q. You had an opportunity to look at the summary
7 report in this case, have you not?

8 A. Yes, I have.

9 Q. And based upon your observance of the summary
10 report and all of the other bench notes, how many areas
11 involve -- deal with saliva?

12 A. There are two exhibits, two items of evidence
13 which appear to have saliva on them. They would be actually
14 three items have had saliva. There are two cuttings,
15 regions of the underwear, which you saw missing from the
16 garment I took out of the box and the vulva swabs.

17 Q. With a reasonable degree of scientific certainty,
18 do the physical findings reflect that a male licked the skin
19 or vagina of any female?

20 A. They do not in my opinion.

21 Q. Would you explain the reasons?

22 A. The background is important to know is that saliva
23 is an extremely rich source of DNA and this can be shown
24 many ways. Forensic laboratories, ours included, regularly
25 examine bottles, cans, and water glasses for DNA, and if we

Dr. Reich - Defense - Direct

1201

1 swab the rim of a water glass I had been drinking today,
2 that is more than enough saliva to give a full profile
3 easily in the laboratory. So, it doesn't take very much
4 saliva to get a robust DNA signal. This case, there is a
5 good indication of saliva because of the test they used, but
6 the amount of male DNA is extremely small, and that's not
7 consistent with it being saliva.

8 There's a second item that I find inconsistent in
9 that the direct swab of the female, which was tested, the
10 valva swab, did not give a male DNA profile, and having
11 reviewed many, many sexual assault cases where the assailant
12 would have licked the victim, those swabs almost always
13 return a robust male DNA profile, and that is not evident on
14 the samples that the lab tested.

15 Q. The lab report referring now to the vulva swab,
16 notes the other stains, the lab report reflects saliva with
17 respect to the findings there, correct?

18 A. That is correct.

19 Q. And if that had been from a male, what would you
20 have expected to find?

21 A. I would have expected to find when they processed
22 that sample for DNA, a full or almost full DNA profile from
23 that contributor, from the male who left, supposedly saliva,
24 behind.

25 Q. What is it about the nature of saliva that tells

1 you that it would be leaving a robust sample of DNA?

2 A. Well, the fact that we have tested hundreds of
3 saliva samples, the fact we developed a test specifically
4 for the forensic identification of saliva and can relate the
5 sensitivity of that test to the final result for DNA
6 profiling, and it's just known, it's been tested hundreds
7 and hundreds of times how much DNA is in saliva. So, we
8 know how much rich a source of DNA it is.

9 Q. Does the viscous quality of the saliva contribute
10 in some way to the amount of DNA that might be left?

11 A. The viscous part specifically, no, but it does
12 contribute to how long lasting a saliva stain is
13 particularly on skin, because it is a sticky -- it is hard
14 to rinse off or wash off. We all have experienced this.
15 And so, once it's deposited on the skin, if you swab that
16 area, you are going to pick it up, and if you pick it up and
17 process it through the laboratory for DNA, you will see the
18 DNA from that saliva.

19 Q. So, is there any indication the examination of the
20 bench notes and the lab summary report, that reflects any
21 male DNA or male saliva on the vulva swab?

22 A. There is no credible or reliable evidence of male
23 DNA on the vulva swabs. There is a very robust signal from
24 the female on the vulva swabs, and there is a test
25 indicating saliva, so the obvious conclusion is that the DNA

Dr. Reich - Defense - Direct

1203

1 result that they do have from that sample comes from the
2 female.

3 Q. Is it correct to say that the largest amount of
4 DNA on the vulva swab, the 1-A sample, the 2-A sample, comes
5 from who?

6 A. The largest contributor of the DNA on the three
7 samples, the 1-F vulva, the 1-A-1. That is one of the
8 stains on the underwear and 1-A-2, the other stain all come
9 from the female. There is no dispute.

10 Q. Now, you read Mr. Chillseyzn's testimony with
11 respect to a trace of male DNA from the vulva swab; do you
12 recall that?

13 A. I do.

14 Q. Is that contained in a summary report?

15 A. It is not.

16 Q. Are there jurisdictions that precluded the trace
17 elements that cannot be specifically identified from being
18 included in a summary report?

19 MR. PERRI: Objection.

20 THE COURT: Sustained.

21 Q. Could you explain to us the significance, if any,
22 of the testimony with respect to trace male DNA?

23 A. At one level the laboratory may just be reporting
24 everything they saw. But, in fact, the material they saw
25 did not reach the level that the laboratory considers

Dr. Reich - Defense - Direct

1204

1 reliable or sufficient for reporting. They state that in
2 their report, and the report has a section where they write
3 down the results of the DNA, and there is no reporting of
4 DNA male results from that sample.

5 Q. Go ahead, I'm sorry.

6 A. So that tells a reviewer that whatever they found
7 did not meet the test of robustness, reliability or
8 sureness, and they didn't include it in their report. So,
9 results that you don't believe, or that are maybe, or
10 perhaps, you cannot draw any conclusions from them because
11 they are maybe, perhaps, we don't know what they are.

12 Q. So, the conclusion drawn by Mr. Chillseyzn, in
13 this particular case, isn't justified by the evidence that
14 you examined here?

15 A. In my opinion, it is not sufficiently justified
16 from the results that they obtained at the time.

17 Q. Now, could they have evaluated -- withdrawn.

18 Did you examine the specific area where they might
19 have drawn this conclusion from as far as the
20 electropherogram?

21 A. Yes. The hard copy documentation of that
22 so-called trace sample was provided.

23 MR. BERGER: Judge, without undoing the
24 exhibit, can we use the copy that the doctor has with
25 respect to his identifying that page?

Dr. Reich - Defense - Direct

1205

1 THE COURT: Show it to Mr. Perri. If you
2 both agree, I don't mind.

3 Q. Can you find that in your materials, can you find
4 that particular electropherogram?

5 A. I could try. You are referring to the trace
6 analysis of the vulva swab?

7 Q. Yes.

8 A. Please give me a minute.

9 MR. BERGER: Can we mark that, please.

10 THE COURT: Mark it for ID first, show it to
11 Mr. Perri and see if it's the exact copy. I have no
12 problem with it with being used.

13 (Defendant's Exhibit B was marked for
14 identification.)

15 MR. PERRI: Okay, your Honor.

16 THE COURT: We can use that document. Let's
17 mark it into evidence.

18 (Defendant's Exhibit B, previously marked for
19 identification, was marked and received in evidence.)

20 Q. Doctor, there is a peak or at least they indicated
21 in the summary report there was not sufficient -- there's
22 language in the summary report for the February 27th report
23 that said these peaks are not reported; do you remember that
24 language?

25 A. Yes, I do.

Dr. Reich - Defense - Direct

1206

1 Q. Now, are you looking at one of those peaks?

2 A. I am.

3 Q. Is there a reason they're not reported?

4 A. Yes. There are several reasons why the laboratory
5 would not have reported these data. The electropherogram is
6 a screen shot of the software that performs the analysis and
7 there are peaks. There are needle-like shapes on the
8 electropherogram which indicate how much DNA there was in
9 the original sample. The way this system works, although
10 it's very sensitive, you do need some DNA. You have to have
11 something to start with. You can't just have nothing in
12 your tube and get a DNA profile. So, there is a minimum
13 amount that you have to have, and if you don't reach that
14 minimum amount, you don't get a good enough result to tell
15 that result from noise, you don't know if it's really
16 re-produceable. Is it background? Is it possible
17 contamination? Is it just noise in the system that day, and
18 the results from technically FG 13411? That's the
19 laboratory case number, sample 1-F, which is the vulva
20 swabs, are at that very low noise background level and the
21 laboratory has a procedure, a standard operating procedure,
22 which says if the data don't reach this threshold, we can't
23 report it, and that's what this electropherogram
24 demonstrates.

25 Q. What does noise mean?

Dr. Reich - Defense - Direct

1207

1 A. Noise is just the inherent background inaccuracy
2 in a measurement. So there is always noise. There's always
3 inaccuracy in any measurement. There is no avoiding it
4 because there's a fair number of steps that go into this
5 process and the machine that does the final analysis is a
6 complicated instrument, which has lasers, and detectors, and
7 lots of electrical components. There's always noise and you
8 must get your signal well above the noise for you to believe
9 it's a real signal versus just noise.

10 Q. So, in this particular case, the level of the peak
11 doesn't exceed the noise level; would that be correct?

12 A. According to the laboratory, that is correct.

13 Q. Could you just circle --

14 MR. PERRI: Objection. The answer was
15 nonresponsive. The question was, in his opinion, was
16 it above the noise level.

17 THE COURT: Let's get the question re-asked
18 and see what your answer is.

19 Q. With a reasonable degree of scientific certainty,
20 as you examined this electropherogram, does it reach the
21 level beyond noise?

22 A. It does not for the laboratory or for myself.

23 Q. There are a number of peaks on that page, I take
24 it; is that correct?

25 A. Yes, there are.

Dr. Reich - Defense - Direct

1208

1 Q. Could you just take a pen, if you would and just
2 circle the particular one you are referring to.

3 A. I can give an example, if you want, certainly.

4 Q. What do you mean?

5 A. There are several examples where the peaks are too
6 low, many examples.

7 Q. Circle the one. All right, there are other areas
8 where the peaks aren't?

9 A. There are two regions where the peaks were
10 identified, but there are one, two, three, four, five, six,
11 seven, eight, nine, ten, eleven, twelve, thirteen, fourteen
12 which are not.

13 Q. Which are not. The one that -- so could you tell
14 whether or not the one that Mr. Chillseyzn was referring to,
15 specifically, on that one, on that page, could you tell
16 which one he was referring to?

17 A. Probably.

18 Q. Just put an N next to that to indicate noise.
19 Just that one.

20 (The witness complied.)

21 Q. You have labeled T. What does lost mean?

22 A. So those are -- that refers to a region of the
23 test where there is no data whatsoever.

24 Q. I see. So this is the page that would refer you
25 to what Mr. Chillseyzn referred to as trace DNA?

Dr. Reich - Defense - Direct

1209

1 A. That's correct.

2 MR. BERGER: Can I put this on the presenter?

3 THE COURT: You may.

4 MR. BERGER: I ask the doctor to step down.

5 THE COURT: He may. Be careful. It's two
6 steps.

7 A. So I apologize, there is a lot going on in this
8 electropherogram. You can see there are one, two, three,
9 four, large rectangles in the system. Each rectangle is the
10 different dye, and on the screen the middle peaks here and
11 all of the noise would be in blue, green, yellow, although
12 the software shows it was black. The yellow doesn't show up
13 on the screen and red. This is a black and white color,
14 which is what we usually get.

15 There are 15, or 16, depending on how you count
16 it, regions in this electropherogram, that are examined by
17 this technique. This is a Y-STR method. I think we'll have
18 a chance to talk about both methods of DNA and the regions
19 that are tested, although, they are very hard to see on the
20 screen are named in these rectangular boxes here.

21 The actual electropherogram is contained within
22 this rectangle. There are two scales that are used by this
23 software. There is the peak height scale, which is along
24 the vertical axis on the left-hand side, and it varies with
25 each dye. So in the blue dye, the scale is from zero to

Dr. Reich - Defense - Direct

1210

1 240, and that's the peak height. That's how big these
2 needle spikes might be, and then the size of the amplified
3 fragment is given on the scale across the top, one hundred,
4 one-fifty, two hundred and so forth.

5 You will notice there are two peaks, two spikes
6 which have been identified by the software, and they have a
7 little box underneath them. There are three pieces of
8 information that the software puts in that box that the
9 analyst tells the software to put in.

10 The first number is the allele call of the peak,
11 the second number is the peak size, according to the scale
12 across the top, and the third number is the peak height
13 according to the scale here.

14 So, there is a number of things happening in the
15 electropherogram, but only two peaks have reached the level
16 where the software says, I see something. All of the rest
17 of the stuff that you see and there they are certainly
18 visible. No one is arguing with that. They do not reach
19 that first threshold. So the software says, I don't see
20 them. Then you will notice that there are at least one,
21 two, three, regions where there is essentially nothing, no
22 data whatsoever of significance. So there is so little DNA
23 of the male that you can't get any signal from at least
24 three or four. You only get some signal from two and the
25 rest of them you don't know whether that is a peak that is

Dr. Reich - Defense - Direct

1211

1 real, is that noise like this? You just don't have enough
2 material, and so the laboratory has a criteria that says if
3 we don't get enough data, we can't report it, and that's
4 what this shows.

5 MR. BERGER: Thank you.

6 Q. So, doctor, in your opinion, there's not enough
7 data to make the determination of what that male -- it
8 means, what that male finding means?

9 A. That is my opinion. It's also the opinion of the
10 laboratory because they also did not report it.

11 Q. So, the laboratory didn't report it and that means
12 they're in agreement with your analysis here?

13 MR. PERRI: Objection.

14 THE COURT: Sustained.

15 Q. Well, you have seen, have you not, from the
16 reports that the lab didn't report it, correct?

17 A. That is correct.

18 Q. Only Mr. Chillseyzn did?

19 A. He spoke of it.

20 Q. He spoke of it?

21 A. He spoke of it at testimony. I don't know whether
22 that is reporting.

23 Q. But he spoke of it. Is his inference justified
24 based upon your scientific evaluation of this
25 electropherogram?

Dr. Reich - Defense - Direct

1212

1 A. I don't believe so. He needs more data.

2 Q. Could there have been a test to obtain more data?

3 A. Yes. So there are steps that the laboratory could
4 have taken to try and improve the data or get more data and
5 then know definitively whether we got out of the maybe or
6 the perhaps world for this.

7 Q. That was not done in this case, to your knowledge?

8 A. To my knowledge, if all of the results were
9 presented in the discovery packet, that work was not done.
10 If it was done elsewhere, I don't have the documentation for
11 it.

12 Q. How do you know, in your opinion, with a
13 reasonable degree of scientific certainty, that no male
14 saliva was found in the vulva swab?

15 A. The results demonstrate that the vast majority of
16 the DNA from sample 1-F, the vulva swabs, come from the
17 female. That's without dispute. So, if we suppose male
18 saliva was deposited and collected, it has to show up on the
19 electropherogram done for the DNA and it does not. So we
20 have a test for saliva that is positive. We have a large
21 amount of DNA that is female. We have maybe a hint of male,
22 perhaps. The conclusion is that the saliva is female.

23 Q. So, is your conclusion from examining all of the
24 reports, including the vulva swab, electropherogram, 1-A1
25 and 1-A2, that any saliva came from the female?

Dr. Reich - Defense - Direct

1213

1 A. The most logical and simplest conclusion is that
2 the saliva that was detected, using a saliva test, came from
3 the female on samples 1-A1, one part of the underwear, 1-A2,
4 the second part of the underwear, and 1-F, the vulva swabs.

5 Q. How does saliva from a female get on the vulva
6 underwear? How does that happen?

7 A. Well, my understanding is that the female in this
8 case is --

9 MR. PERRI: Objection.

10 THE COURT: Sustained.

11 Q. Doctor, have you observed studies about -- are you
12 familiar with studies with respect to saliva and how it is
13 transferred?

14 A. Yes. So there have been a number of academic
15 studies by forensic labs trying to understand how DNA is
16 spread and transferred, and interestingly, saliva is a body
17 fluid that is transferred easily, and all of the time we
18 touch our face and our lips often. If you use your fingers
19 to just turn pages like I did to make it easier, that is
20 more than sufficient saliva for a full profile, and I've
21 just transferred it onto three other items just by moving it
22 around, and it turns out we do that a lot.

23 Q. And how else is saliva transferred, through
24 sneezing?

25 A. So, technically, that would be a mixture of mucous

Dr. Reich - Defense - Direct

1214

1 and saliva, but yes, if you cough or sneeze into your hands,
2 you obviously have saliva there. You reach for something or
3 touch something, your saliva will be transferred to that
4 item. That's how it works.

5 Q. When you go to the bathroom, could you transfer it
6 from your hands or whatever to other areas of your body?

7 A. Certainly. You don't even have to necessarily go
8 to the bathroom. You just have to touch yourself in order
9 to perform the transfer.

10 Q. What is touched DNA?

11 A. So touch DNA is the fairly recent name given to
12 leading DNA behind from handling objects. So it's a very
13 active area for forensic labs to analyze, and so we're
14 talking about door handles, hammer handles, screwdriver
15 handles, zipper pulls, buttons on your shirt, things you
16 have handled with your fingers or hands and you have left
17 some of your DNA behind by simply touching an item or
18 touching it repeatedly.

19 Q. So if underwear were touched by someone, would
20 they possibly leave their DNA there?

21 A. Certainly.

22 Q. Through touch DNA?

23 A. Absolutely.

24 Q. So let's turn to stain 1-A1.

25 A. Okay.

Dr. Reich - Defense - Direct

1215

1 Q. The report reflects -- tell us what you learned
2 from the report with respect to stain 1A-1.

3 A. May I refer to the actual report?

4 Q. Sure.

5 A. So I'm referring to two reports from the Office of
6 the Medical Examiner, County of Nassau, and they are dated
7 February 27, 2014, and February 28, 2014, and they describe
8 the summary of the results that the laboratory obtained.
9 So, in the analysis of stain 1-A on the underwear, the first
10 analysis using the regular code, the STR, the report states
11 that PCR DNA typing was done on stain 1-A1 from the
12 underwear and vulva swabs. No DNA alleles foreign to the
13 victim were detected.

14 So all of the DNA that they found on stain 1A-1,
15 using the coded type DNA were from the female.

16 Q. Does part of that analysis with respect to in the
17 summary report with 1A-1 say anything about a male?

18 A. It does not.

19 Q. Doctor, you are you looking at February 27th?

20 A. I am.

21 Q. Y-STR DNA typing was done, DNA profile; do you see
22 that second sentence there?

23 A. Yes. So, another type of DNA testing was
24 performed called Y-STR testing, and that was done on that
25 sample. And so on that sample they did identify a male

Dr. Reich - Defense - Direct

1216

1 contributor using the Y-STR method.

2 Q. The first one was the other method you used which
3 did not detect any male?

4 A. Correct. I did not use that method, but the
5 laboratory did. There are two kinds of chromosomes that
6 people have. That is the way people are built. Other
7 organisms are made differently, but people have two kinds of
8 chromosomes. They have what is called somatic chromosomes
9 and sex chromosomes. It's just the way we are built.

10 Somatic chromosomes are numbered one through
11 twenty-two. The largest being number one and the smallest
12 being twenty-two.

13 There are two sex chromosomes, the X and the Y
14 chromosome. They're different in terms of how we inherit
15 them. They're all made up of DNA, but you inherit the
16 somatic chromosome in a different way than we all inherit
17 the sex chromosome. The Y-STR, I'm sure you heard about,
18 are those data, only come from the Y sex chromosomes. Only
19 males have Y chromosomes. And so, if you test the genetics
20 of the Y, all you see is the genetics of the male in that
21 sample, even if you have much more female DNA in there. If
22 you have the Y in there, you can see it.

23 Q. So even though you have testified that there is
24 the most amount of DNA in all three items, the vulva swab,
25 1A-1, 1A-2, came from the female?

Dr. Reich - Defense - Direct

1217

1 A. That's correct.

2 Q. But in testing with the Y-STR, you could determine
3 that there was a male DNA there?

4 A. Correct.

5 Q. With a reasonable degree of scientific certainty,
6 is that male DNA from saliva?

7 A. There is no way to know, but it's not the amount
8 of male DNA is not consistent with it being saliva.

9 Q. So there is no way to say with a scientific degree
10 of certainty that there is male saliva there?

11 A. That's correct.

12 Q. And is the reason you set forth that it is most
13 likely not male saliva is because most of the DNA contained
14 in stain 1A-1 is from the female?

15 A. That is correct. The vast majority of the DNA
16 comes from a female. That's very clear and without dispute.
17 There is definitely some male DNA in that sample, but it's
18 at a much, much lower level, and so, we have to explain
19 where it might come from, what the source might be. We know
20 there is saliva from the test. We know most of the DNA, by
21 far, is female. That's the most logical source of the DNA.

22 Q. And would a conclusion with a reasonable degree of
23 scientific certainty suggest that the male DNA came from
24 touch DNA?

25 A. It might have. We don't know, but it's much less

Dr. Reich - Defense - Direct

1218

1 and certainly at the level you would expect for handled
2 objects.

3 Q. Let me ask you about the difference between major
4 and minor contributor?

5 A. Okay.

6 Q. Is that significant?

7 A. It's only important when you analyze the
8 electropherogram. These are technical terms, even though
9 they are simple and they refer to the comparison of how much
10 DNA the two contributors gave. So we have electropherogram
11 with -- where we have two people. There's two DNA profiles
12 mixed in and sometimes, if there is much more DNA from one
13 person than the other, that's reflected in the peaks and
14 that can be shown on the electropherogram.

15 So major means more DNA, minor means less. You
16 should draw no conclusions as to importance, time of
17 addition, what was going on when they did the addition.
18 It's just more DNA versus less.

19 Q. You also noticed in your report that when they
20 swabbed and obtained dried secretions; do you recall that?

21 A. Yes, that's listed in one of the documents.

22 Q. What was the conclusion with respect to the dried
23 secretions?

24 A. The conclusion was it was not saliva.

25 Q. So what does that tell you with respect to the

Dr. Reich - Defense - Direct

1219

1 overall discussion of the stains with 1A-1, 1A-2, and the
2 swab?

3 A. I think we can draw at least two conclusions. One
4 is that the processing of the evidence was thorough, and
5 that the examination of the female was thorough, and they
6 tried to look for regions that would have saliva on them.
7 And that even areas which they thought might have saliva,
8 because they looked like it, because they are dried, did
9 not. So, there is not a lot of saliva on this sample, and
10 those secretions were not saliva.

11 Q. When you say not a lot of saliva on the sample,
12 are we talking about all of the samples, the vulva swab, the
13 underwear, 1A-1 and 1A-2?

14 A. We are.

15 Q. What you are saying is the fact that the dried
16 secretions did not reveal saliva, means there wasn't a lot
17 of saliva?

18 A. I think that's a reasonable conclusion from the
19 results they presented.

20 THE COURT: Mr. Berger, find a good place to
21 break. We have been going a little bit more than an
22 hour.

23 MR. BERGER: You can do that now.

24 THE COURT: Very good. Ladies and gentlemen,
25 this is your break after the hour's worth of work. Use

Dr. Reich - Defense - Direct

1220

1 the facilities if you need to.

2 Do not talk about the case with each other.

3 Don't let anyone talk to you about the case, as you are
4 coming to and from the courtroom. Don't get on the
5 phones to do any research. See you all in ten minutes.

6 (Whereupon, the jury exited the courtroom.)

7 (Whereupon, a short recess was taken.)

8 (Whereupon, the jury entered the courtroom.)

9 THE CLERK: Do both sides stipulate all sworn
10 jurors are present?

11 MR. PERRI: Yes, your Honor.

12 THE CLERK: Defense?

13 MR. BERGER: Yes.

14 THE CLERK: You are reminded you are still
15 under oath.

16 THE COURT: Welcome back everyone.

17 Mr. Berger, you may continue.

18 DIRECT EXAMINATION

19 BY MR. BERGER: (Continuing)

20 Q. Let me draw your attention to something you
21 mentioned before where you pointed out that saliva could be
22 transferred to the crouch area or the underwear area. Do
23 you need to touch, if you sneeze, or you cough and saliva
24 gets on your hands, do you need to touch those areas
25 immediately after that happens in order to transfer the DNA

1 saliva to the crouch or the vulva vagina area?

2 A. No, you don't. It's easier and you get more
3 transfer if the body fluid is still wet, but even you can
4 certainly get transfer after the body fluid has dried.

5 Q. Can you, by the way, quantify the amount of saliva
6 contained in the stains of 1A-1 and 1A-2?

7 A. No, you cannot. There is no test which can
8 measure the amount of saliva in a stain. The test is a
9 positive or negative one. It's either yes or no. It does
10 not tell you how much.

11 Q. Still though, in your analysis, of all of the
12 three areas, the vulva swab, 1A-1, 1A-2, the saliva that --
13 the DNA that is there is mostly from the female, correct?

14 A. The vast majority of the DNA that is identified on
15 those three exhibits definitely comes from the female.

16 Q. Let me draw your attention to stain 1-A2.

17 A. Okay.

18 Q. What did the bench notes and the report tell you
19 with respect to stain 1A-2?

20 A. If I could read from the relevant report, which is
21 February 27, 2014. The report mentions that the presence of
22 saliva was indicated on stain 1A-2, and that PCR typing was
23 performed. A minimum of two individuals were identified.
24 You get the information from the electropherogram, and that
25 is using the somatic testing that we talked about earlier.

Dr. Reich - Defense - Direct

1222

1 Then the report goes on to say that the Y-STR
2 testing was done. That's the same kind of testing I just
3 walked you through a minute ago, and that they found two
4 male contributors by examining the Y-STR analysis.

5 Q. Now, one of the male contributors is consistent
6 with the defendant, Mr. Ramos, correct?

7 A. That is correct.

8 Q. But the other one is unknown, correct?

9 A. There are two. There's a minimum, but most likely
10 just two male who have left their DNA on stain 1A-2. One of
11 the Y-STR haplotype, that's a technical term for the DNA
12 profile, is consistent with Mr. Ramos. The other Y-STR
13 haplotype, there is no reference standard, there is no
14 comparison swab that we have, so that individual is unknown.

15 Q. So, when you say there is no reference swab, no
16 attempt was made to determine the identity of the second
17 male; am I correct?

18 A. I'm not aware of any other samples in this case
19 that could have been used for comparison.

20 Q. Could you find the electropherogram that refers to
21 both males appearing on the Y-STR testing?

22 A. I could try. It might take me a minute.

23 Q. Go ahead, please.

24 A. So, I actually have two electropherograms. I have
25 one which has the somatic DNA, and one that has the Y-STR, I

Dr. Reich - Defense - Direct

1223

1 believe.

2 Q. Well, if it was a somatic, then we would only have
3 one male, correct?

4 A. You can only observe one male on that sample, that
5 is correct.

6 Q. I'm asking you, if you could find the Y-STR which
7 would reflect the two?

8 A. I'm trying to find that, Mr. Berger. Okay, I
9 believe I have the two sheets that are relevant.

10 MR. BERGER: Could we have them marked
11 please, C and D.

12 THE COURT: They will be marked C and D.
13 Show them to Mr. Perri like the last one and see if
14 they can be used.

15 MR. BERGER: Before we mark them, let me show
16 it to him.

17 MR. PERRI: No objection. They are exact
18 copies.

19 THE COURT: They are Defendant's C and D in
20 evidence.

21 (Defendant's Exhibits C and D, previously
22 marked for identification, was marked and received in
23 evidence.)

24 Q. Take a look at those documents, doctor.

25 A. Yes.

Dr. Reich - Defense - Direct

1224

1 Q. Can you observe on those exhibits, C and D, the
2 parts of the electropherogram that reflect two males, two
3 different males?

4 A. Certainly.

5 Q. And could you just put the number one next to one
6 and number two next to the other?

7 A. Okay.

8 Q. On each one of them, if the two are on both.

9 (The witness complied)

10 MR. PERRI: May we approach?

11 THE COURT: You may.

12 (Whereupon, there was a sidebar discussion
13 with the Court and counsel, as follows:)

14 MR. PERRI: I have an objection to the fact
15 that the witness is utilizing some stack of papers and
16 making -- transferring the notes.

17 THE COURT: The Court will let the record
18 reflect the Court notes that before the marking that
19 you are asking for, the witness is referring to and
20 utilizing some other piece of paper. It's not a
21 problem. You will be asking whatever that is when you
22 stand up. It's probably his notes.

23 MR. BERGER: It's the bench notes.

24 (Whereupon, the proceedings resumed.)

25 Q. May I have it, please?

Dr. Reich - Defense - Direct

1225

1 A. (Handing)

2 Q. Doctor, I see nothing has been marked on exhibit
3 C; was that because they were not there?

4 A. Sometimes it's not easy to tell who was number one
5 and number two.

6 Q. Right, but you could tell there are two males?

7 A. Correct. Correct from the summary of the data.

8 Q. Put next to on C, the letter M next to both
9 markings that indicate male.

10 (The witness complied.)

11 Q. I take it, doctor, that from your reading of the
12 report and from your examination of the peaks in both of
13 these exhibits, there's a sufficient amount to indicate it
14 passes the threshold, and you could make an identification
15 of a male, correct?

16 A. If I could make it more precise?

17 Q. Go ahead.

18 A. The quality of the data, the size of the peaks are
19 such that the laboratory was able to make many more
20 assignments, and the assignments are much more sure, and
21 it's clear that there are two males in the sample. That's
22 minimum, without dispute, and in some cases it's easy to
23 separate the two and the others perhaps not so much.

24 Q. Can you tell, according to what you marked in
25 exhibit D, where you put numbers, which one is consistent

Dr. Reich - Defense - Direct

1226

1 with Mr. Ramos and which is not?

2 A. Yes, you could do that by comparing the standard
3 for Mr. Ramos to the evidentiary sample.

4 Q. Does it matter if one of the male contributors is,
5 as you say, the major and one the minor -- withdrawn.

6 To ascribe one of them as the major and one the
7 minor, does that mean anything more than just more DNA that
8 comes up?

9 A. It does not.

10 Q. That's all it means?

11 A. It means simply that one set of peaks is larger in
12 the electropherogram than the other. In this example the
13 difference is small between major and minor, so they are
14 roughly the same. Although, one set of peaks is larger.

15 Q. If they are roughly the same, but one is slightly
16 more than the other, they say that is the major and the
17 other one is the minor?

18 A. That is correct.

19 Q. Doctor, what should have been done here with
20 respect to the non-stain area of the underwear?

21 MR. PERRI: Let me rephrase that.

22 THE COURT: Sustained as to form.

23 Q. Is it significant that no DNA testing was done on
24 the non-stain area of the underwear?

25 A. In my opinion, it is. So, throughout --

1 Q. Explain.

2 A. Throughout the procedure for doing DNA, the
3 laboratory introduces a number of controls. Those are
4 samples which the lab knows something about. Technically,
5 there are two kinds of controls. There are negative
6 controls, which should come up blank. You should get no DNA
7 from those, and there are positive controls from which the
8 laboratory should get results from which they know, because
9 they know what the sample is. When an article is examined,
10 you need a control for that item itself. On underwear, or
11 shirt, or blouse, you would take a region of fabric that has
12 no stain, no visible stain, and you would test that along
13 with the stain. That's called the sub-straight control, and
14 it controls for the fact that that fabric might have DNA on
15 it, just at some level, everywhere, because we shed DNA and
16 it's possible that that item of underwear just has some DNA
17 on all parts of it. There is no way to know that unless you
18 take a sub-straight control and that, from what I can
19 observe, was not done in this case.

20 Q. If they had done that and found the defendant's
21 DNA on the non-stained area, what would that tell you?

22 A. Then the conclusion you would reach thinking that
23 the DNA of Mr. Ramos was associated with a stain would be
24 incorrect, so if his DNA is just distributed on the fabric
25 because of a number of reasons, and you excise the stain and

Dr. Reich - Defense - Direct

1228

1 find his DNA, his DNA is then not associated with the stain.
2 It means his DNA is on the item for some other reason.

3 MR. BERGER: Thank you very much, doctor.

4 MR. PERRI: May we approach?

5 THE COURT: Yes. Off the record.

6 (Whereupon, there was an off-the-record
7 discussion.)

8 THE COURT: All right, I'm going to send you
9 out for an early lunch. Please be back in the jury
10 room as close to 2:00 as possible. We're going to have
11 a full afternoon. I want to get as much testimony in
12 as we can today.

13 Please remember to keep an open mind
14 throughout this trial. Do not discuss the case amongst
15 yourselves or with anyone else during the trial. Do
16 not permit anyone to discuss the case in your presence.
17 Do not talk to the lawyer, witness, or the defendant
18 about anything during the trial.

19 Do not visit or view the place where the
20 charged crime was allegedly committed, or any other
21 place involved in this case.

22 If there is any news coverage of the case, do
23 not read, view or listen to any accounts or discussions
24 of the case reported by the news media, and do not
25 attempt to research any fact, issue or law related to

Dr. Reich - Defense - Direct

1229

1 this case, whether by discussion with others, by
2 research in the library, or on the Internet, or by any
3 other means or source.

4 Have a great lunch. Looks like the sun is
5 trying to peek through. See you all at 2:00 sharp.

6 (Whereupon, the jury exited the courtroom.)

7 THE COURT: Be careful stepping down. I need
8 you back here at 2:00. I want to get started as
9 quickly as we can.

10 Anything for the record, People?

11 MR. PERRI: No.

12 THE COURT: Mr. Berger?

13 MR. BERGER: No, your Honor.

14 (Whereupon, a luncheon recess was taken.)

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1 A F T E R N O O N S E S S I O N

2

3 THE CLERK: Case on trial continues,
4 Indictment Number 742N of 2014. People of the State of
5 New York vs. Daniel Ramos.

6 All parties present. The jury is not
7 present.

8 People ready?

9 MR. PERRI: Yes.

10 THE CLERK: Defense counsel?

11 MR. BERGER: Yes, your Honor.

12 THE COURT: Anything for the record before I
13 bring in the jury and reseal the witness?

14 MR. PERRI: No, your Honor.

15 MR. BERGER: No, your Honor.

16 (Whereupon, the jury entered the courtroom.)

17 THE CLERK: Do both sides stipulate all sworn
18 jurors are present and properly seated, People?

19 MR. PERRI: Yes, your Honor.

20 THE CLERK: Defense counsel?

21 MR. BERGER: Yes.

22 THE CLERK: Doctor, you are reminded you are
23 still under oath.

24 THE COURT: Welcome back. I hope you enjoyed
25 your lunch.

Dr. Reich - Defense - Cross

1231

1 People, you may cross-examine.

2 MR. PERRI: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MR. PERRI:

5 Q. Good afternoon, doctor.

6 A. Good afternoon.

7 Q. Doctor, on direct Mr. Berger had you outline your
8 research, experience and credentials, had you go through
9 various products you worked on, including pharmaceuticals,
10 bacteria, the vision of cats, other passages, working in
11 drug lab, but in the range of your experience, your entrance
12 over the course of your career, your entrance as a forensic
13 genetics is relatively recent; is it not?

14 A. Thirteen, fourteen years.

15 Q. And you also described that you worked for a small
16 little lab; is that correct?

17 A. That is correct.

18 Q. And your website for your lab, which is called
19 Independent Forensics, on the website for the lab you are
20 opening up a facility that will handle tens of thousands of
21 samples per year; is that not correct?

22 A. I don't believe that's on our most recent website,
23 but we can handle many samples. We don't have that many
24 samples, but it is possible.

25 Q. And also on the investor section of your website

1 it notes you're not currently certified as a forensic lab?

2 A. That is incorrect. We're certified. We have
3 three certifications.

4 Q. It also notes on your investor's page of your
5 website that your business plans seek to obtain a lucrative
6 contract, taking over work of government lab, noting that in
7 Illinois you could stand to get a substantial portion of the
8 200 million dollar of DNA testing that is being done in
9 local government labs in Illinois?

10 A. That's no longer on our website and hasn't been
11 for many years. We do not have outsourced contracts and
12 have never had an outsourced contract.

13 Q. Now, part of what your company website states is
14 that you provide expert testimony; is that correct?

15 A. That is correct.

16 Q. And your company is a profit company, correct?

17 A. Yes.

18 Q. And you are being paid for your testimony,
19 correct?

20 A. I am not. The laboratory will invoice for my
21 time, but I'm on salary. I don't make any more or less
22 whether I testify or not.

23 Q. Doctor, you are the chief scientific officer of
24 the laboratory; is that correct?

25 A. That is correct.

Dr. Reich - Defense - Cross

1233

1 Q. And you are one of the founding partners?

2 A. That is also correct.

3 Q. If your laboratory does make more money each year,
4 you stand to make more money as one of the partners of the
5 laboratory, correct?

6 A. Incorrect. My salary is fixed. I do not make
7 more or less depending on how the business does on that
8 scale.

9 Q. You are provided no other compensation?

10 A. I have salary. My expenses are paid. I buy my
11 own healthcare. We don't have vision or dental. I have a
12 salary.

13 Q. Are you part owner of the business?

14 A. I am.

15 Q. So as an owner of the business that is being paid
16 by the defense counsel, the business that you own is being
17 compensated for your testimony?

18 A. That is correct.

19 Q. How much is the business being compensated?

20 A. Our rate sheet is clear. We charge \$2,500 for
21 testimony and \$250 an hour for consultation.

22 Q. For the \$2,500, is that per day?

23 A. Yes, it is.

24 Q. And \$250, is that per hour?

25 A. It is.

Dr. Reich - Defense - Cross

1234

1 Q. How many hours did you work on this case?

2 A. I would have to go to look that up, but I'm going
3 to guess, so far, probably six to eight maybe. I make
4 notes, and then I give it to the office and they prepare the
5 final invoices.

6 Q. You traveled here from Chicago, correct?

7 A. I did.

8 Q. And your travel was paid for, correct?

9 A. My expenses are covered by whoever hires me.

10 Q. And that includes your meals, correct?

11 A. Yes, that would include my meal.

12 Q. And your hotel stay?

13 A. Yes, it would.

14 Q. Did you generate any reports as part of your work
15 for the defense?

16 A. For this case?

17 Q. Yes.

18 A. No.

19 Q. Did you write any E-mails to defense counsel?

20 A. No, Mr. Berger does not have E-mail. There were
21 no E-mails in this case.

22 Q. And, doctor, you didn't conduct any actual test
23 with regard to the evidence in this case?

24 A. Absolutely. We received no evidence in this case.
25 Our laboratory performed no testing on items of evidence or

1 reference samples in this case.

2 Q. And you haven't been to the medical examiner's
3 office, correct?

4 A. I've never visited the Office of the Medical
5 Examiner, County of Nassau Laboratory.

6 Q. You didn't review their standard operating
7 procedure before testifying?

8 A. I was not provided with those, and I was not able
9 to review them.

10 Q. And so, you don't actually know why or why not
11 something was done or what motivation rules and procedures
12 of the laboratory are, correct?

13 A. I certainly don't know the motivations. I
14 certainly can make an educated guess as to the scientific
15 and the procedural reasons. I have seen SOP's from dozens
16 of laboratories.

17 Q. So that's what you did, you made an educated
18 guess?

19 A. Yes.

20 Q. And you talked about publishing papers as part of
21 your work for Independent Forensic, and the papers that you
22 have recently published regarding DNA forensic, they are
23 about products your company sells, correct?

24 A. Yes, they are.

25 Q. You testified on direct that there was saliva

1 present on the vulva swabs, and both stains 1A-1 and 1A-2 in
2 the underwear tested by the medical examiner's office,
3 correct?

4 A. I believe, I said the test for saliva was
5 positive.

6 Q. And now, you are talking about saliva is mostly
7 water and the enzyme amylase, correct?

8 A. No, that is not correct.

9 Q. What is saliva then?

10 A. Saliva does compose of water. It also composes
11 all of the loose epithelial cells that are inside the mouth.
12 There's mucous in it as well, there's also, in addition,
13 amylase and all of the contaminated microorganisms
14 themselves that are inside the mouth. All of that takes
15 part in saliva.

16 Q. Is saliva mostly water, doctor?

17 A. I don't think the four compositions known, but we
18 are mostly water as human beings, so I'm going to say saliva
19 is mostly water.

20 Q. The DNA present in saliva, it's not present in
21 amylase, correct?

22 A. That's correct, amylase is an enzyme and has no
23 DNA.

24 Q. The DNA in the saliva doesn't come from -- the DNA
25 in the saliva comes from the epithelial cells contained in

1 the saliva, correct?

2 A. That's the thought, although, there are two kinds
3 of DNA, probably. There's cellular DNA. That's the DNA
4 inside cells, and then there is DNA outside cells called
5 extracellular.

6 Q. Now, epithelial cells are skin cells, correct?

7 A. They are.

8 Q. And their skin cells inside of a person's mouth
9 and outside on their body on their skin, correct?

10 A. Correct. They're not the same, but the source of
11 the cells is eventually the same.

12 Q. So on the vulva swab taken from the victim in this
13 case, there were epithelial cells present on the vulva swab
14 of the victim taken in this case that was also positive for
15 saliva, correct?

16 A. Most likely. That wasn't demonstrated, but that's
17 an excellent assumption.

18 Q. And for the fact that there was a large amount of
19 DNA from the victim on a swab that was rubbed on her vulva,
20 that's to be expected, correct?

21 A. Absolutely.

22 Q. It would also be expected that clothing, interior
23 clothing that is in direct contact of an individual, whether
24 it's the victim or anyone else, that clothing in direct
25 contact with a person would contain a substantial amount of

1 their DNA?

2 A. It would have some. I'm not sure if the word
3 substantial is the word I would use, but definitely, if you
4 wear clothing your DNA is going to get on it.

5 Q. It would be expected that the victim's DNA would
6 be on the inside of her underwear, correct?

7 A. It would be.

8 Q. You also testified that according to the test that
9 your company sells and the medical examiner's office uses,
10 there is no indication how much saliva was present either on
11 the vulva of the victim or in the underwear of the victim,
12 correct?

13 A. It's not just our test. There is no way to
14 determine the quantity of the body fluid that is tested.

15 Q. So it's fair to say your test and no test would be
16 a quantitative test, correct?

17 A. No, there are tests which can measure things, but
18 the body fluid tests are not quantitative.

19 Q. The test that your company sells is sensitive?

20 A. Yes, very sensitive.

21 Q. It's able to detect extremely small amounts of
22 saliva, correct?

23 A. Absolutely.

24 Q. Now, the less saliva that would be present on a
25 person would necessarily lead to their being less DNA

1 deposited from the saliva, correct?

2 A. They're roughly proportional.

3 Q. Is it fair to say, if there is only a little bit
4 of saliva left on a person, there would also only be a small
5 amount of DNA?

6 A. I think you might mean left on a person.

7 Q. Yes.

8 A. And the answer is, that's correct, but I think we
9 need to provide some context about how little we are talking
10 about.

11 Q. Now, doctor, I'm going to ask you to take a look
12 at what was marked as Defendant's Exhibit B, as in boy.

13 A. Okay.

14 Q. And, doctor, was that the sheet that you used to
15 testify regarding the peaks and the question of noise on the
16 vulva swab sample?

17 A. I believe it was.

18 MR. PERRI: Could I have it back.

19 Q. Sorry, the markings on the page, those were the
20 markings you made?

21 A. I believe that's the same piece of paper.

22 Q. Now, doctor, was there any testing done in this
23 case with regard to a handgun?

24 A. Not to my knowledge.

25 Q. I ask you to take a look at Defendant's B again

Dr. Reich - Defense - Cross

1240

1 and look at the second, third and fourth section of that
2 page that are all pertaining to the test of arms and a
3 handgun.

4 A. Correct. So the top -- you are correct. The top
5 part of this is from a case, and the other three appear to
6 be from another one.

7 Q. So, when you testified that that was evidence of
8 how their are peaks and noise, and the vulva swab didn't
9 have DNA, you weren't using the correct sheet?

10 A. I was using one of the correct sheets. The top
11 part is indeed from this case, correct.

12 Q. And the other three out of four are --

13 A. Are not.

14 Q. You made markings on the three?

15 A. At the time, I did, that's correct.

16 Q. As examples, where there were peaks, according to
17 you, to locate the male DNA?

18 A. Correct. The top one still has a lost locus as
19 well as three others.

20 THE COURT: Only one person can speak at a
21 time. Wait for a question to be asked, doctor, before
22 you give answer, and let the witness complete his
23 answer. And if you have a request of the Court
24 regarding that answer, I'll certainly entertain it.

25 MR. PERRI: Thank you, your Honor.

Dr. Reich - Defense - Cross

1241

1 MR. BERGER: Can we approach?

2 THE COURT: Yes.

3 (Whereupon, there was a sidebar discussion as
4 follows:)

5 MR. BERGER: I would like a stipulation to be
6 made now to this jury that the fact that the prosecutor
7 presented as material that relates to this case having
8 related to a handgun case is misleading and improper,
9 and we are relying on the documents provided to us by
10 the prosecutor that this were the bench notes taken
11 from the analysis of this case.

12 The fact that they have, through DNA, DNA
13 records from another case, should be noted and told to
14 the jury. That's totally improper and it's misleading.
15 We had every right to assume that these documents
16 provided to us related only to this case, not to any
17 other case.

18 MR. PERRI: Your Honor, the sheet is clearly
19 marked with the file numbers, the FG numbers from the
20 laboratory. The sheet also specifically says these
21 three out of four boxes pertain to arm and handgun.
22 Defense counsel put it into evidence with his witness.

23 THE COURT: I'm not going to, at this point,
24 I'm not giving any instruction to the jury. Both sides
25 had ample opportunity to carefully read these documents

Dr. Reich - Defense - Cross

1242

1 and do with them what they choose to do with them.
2 There's not going to be an instruction given at this
3 point. I'll entertain it further, if it needs to be
4 entertained further at the close of this witness's
5 testimony, but at this point in time, this is an
6 expert. He's expected to know how to read. You are
7 both attorneys. You are both expected to know how to
8 read. I'm not going to give any instruction with
9 regards to that particular document at this time.

10 MR. BERGER: It's an attempt to mislead.
11 This is bad faith on the part of the prosecutor. It's
12 an attempt to sandbag the defense. I couldn't read
13 those sheets. I wouldn't know what they meant.

14 THE COURT: Your expert should be able to
15 read the sheets, that's why he is the expert.

16 MR. BERGER: He's assuming the sheets apply
17 to only the DNA analysis with respect to this case. To
18 throw in something else out of left field is totally
19 bad faith on the prosecutor. He should have corrected
20 it if he knew it. He obviously does it now when he is
21 asking questions. He should have gone up to the Court
22 and said, we gave the defense documents from another
23 case having nothing to do with this, and we -- I
24 wouldn't say necessarily bad faith, but good faith,
25 would have required them to make the representation to

Dr. Reich - Defense - Cross

1243

1 the Court and say we made a mistake here, and not use
2 that as an attempt to cross-examine the doctor as if he
3 was mistaken in his analysis.

4 THE COURT: The problem I have, counselor, is
5 you are the individual who pointed out at the time
6 specifics on that document. I haven't seen that page
7 yet. As I understand what has been said to me, it
8 distinguishes its section by case number. There's only
9 one case number that is at issue here in this case, and
10 in this trial. It is incumbent on everyone to read
11 carefully that which they are provided. I don't know
12 whether or not when the medical examiner's office
13 produces records it starts to parse out that which
14 appears on the page. There is no testimony regarding
15 that, so I'm certainly not going to make an assumption
16 that at the point in time these records were made,
17 there was some knowledge on the part of the medical
18 examiner's office that someone may come in and use this
19 particular page to make an argument at a trial.

20 MR. BERGER: Mr. Perri is doing it now. He
21 should have come up to the Court before
22 cross-examination began and say, you know our office,
23 the medical examiner, made a mistake including
24 documents from another case. I want to point it out to
25 the defense and not attempt to sandbag the doctor by

1 introducing this here. This is bad faith on the
2 prosecutor. Mistakes are made as part of humanity. We
3 all make them. This can't be accepted as a legitimate
4 basis in a trial as important to this to sandbag a
5 doctor by pointing out, by the way, you used a
6 document --

7 THE COURT: We're going to stop now. This
8 Court doesn't see it as sandbagging the doctor, and you
9 had the full and fair opportunity to review these
10 records. In fact, yesterday we were here for 40
11 minutes after the trial. Everybody had the weekend,
12 all day yesterday, and then this morning to do whatever
13 they needed to do with these documents. You chose to
14 highlight that page. The People now get to
15 cross-examine on the page. You chose to highlight it
16 and put it into evidence. I'm not giving that
17 instruction to the jury.

18 (Whereupon, the proceedings resumed.)

19 CROSS-EXAMINATION

20 BY MR. PERRI: (Continuing)

21 Q. Doctor, you testified on direct that the Y-STR
22 levels that were found on the vulva swab in testing the
23 vulva swab, there was noise; is that correct?

24 A. I said that there was noise there, and they were
25 below the threshold level for the laboratory, that is

1 correct.

2 Q. So the peaks that were found in the testing of the
3 Y-STR levels of the vulva swab, they weren't necessarily
4 noise?

5 A. No. I think I was pretty clear from the data you
6 couldn't tell, and that's why the laboratory did not report
7 them in their allele summary. That's the end of the report
8 where they put the DNA results, and from the actual report
9 they just mentioned they were there at a level that they
10 couldn't interpret.

11 Q. Doctor, when you say that's why they did it,
12 that's your conclusion as to why they did it?

13 A. That's correct. It's a good conclusion.

14 THE COURT: Let me instruct everyone.

15 Doctor, I need you to answer the question that is given
16 to you, please.

17 And, People, I need you to let the witness
18 finish the answer. Don't try to add, don't try to cut
19 off. The reporter can only take down one person at a
20 time.

21 I'll have the question re-asked.

22 THE WITNESS: Thank you, your Honor.

23 Q. So that when you say, when you explain why the lab
24 did or did not do or what conclusions the lab made, that's
25 your conclusion and your assumption, correct?

1 A. It's their conclusion because it's written on
2 their report, but it's my assumption as to why they wrote
3 that.

4 Q. Now, when you say written on their report, in
5 their report, and in the bench notes, and the records of the
6 testing, it does note that Y-STR male DNA was found,
7 according to the testing of the vulva swab?

8 A. The bench notes do mention that, but the report is
9 different, and there are no allele data in that report.

10 Q. And, doctor, when you say there's no allele data,
11 that would be whether or not a profile is generated,
12 correct?

13 A. No, that would be whether there are alleles that
14 met the laboratory standards for reporting.

15 Q. And when you say, that's below the threshold, the
16 threshold is approximately three times the noise level,
17 correct?

18 A. The threshold, there are actually a number of
19 thresholds, so, one threshold that's used by analytical
20 chemistry is three times the noise. There is a threshold
21 of where the software identifies the peaks, and then there
22 is an additional threshold if there is a mixture. There is
23 a number of thresholds that have to be met.

24 Q. So, doctor, is your testimony that the
25 electropherogram that you examined were consistent with no

1 male DNA being present on the vulva swab?

2 A. I was -- I thought clear that it wasn't clear that
3 there was a maybe, or a perhaps, there is an STR profile
4 from that particular sample and that the laboratory did not
5 report allele data, although they mentioned there might be
6 trace amounts.

7 Q. With respect to the Y-STR, the male DNA found on
8 the vulva swab, they actually do two phases of testing on
9 that DNA, correct?

10 A. It's my understanding they did both sematic
11 testing and Y-STR testing.

12 Q. With respect to the Y-STR testing that they also
13 did quantitative testing with regard to the Y-STR; is that
14 correct?

15 A. Not the way you phrased it.

16 Q. What would be the second test of the testing on
17 the Y-STR on DNA?

18 A. In the process of taking a sample of item of
19 evidence through DNA, one of the steps is that the lab
20 measures the amount of DNA that is recovered, and in that
21 test the lab gets two pieces of information. It gets the
22 total amount of DNA, roughly, that is recovered, and it gets
23 an estimate of how much male DNA is recovered in that same
24 sample.

25 Q. According to the testing done by the medical

Dr. Reich - Defense - Cross

1248

1 examiner's office, they were able to determine an amount of
2 male DNA present on the vulva swab, correct?

3 A. There was a value reported, that's correct.

4 Q. A value of male DNA found on the vulva swab,
5 correct?

6 A. It was a number.

7 Q. And that number was an amount, correct, doctor?

8 A. It's an amount.

9 Q. Whether or not there was an amount sufficient to
10 develop an allele and develop a full profile, is different
11 from DNA being nonexistent, correct?

12 A. It is, but that's not relevant for the
13 measurement, but that is correct.

14 MR. PERRI: Your Honor, this is taken from
15 the DNA reports. It's page 89. I will show it to
16 counsel before the witness.

17 THE COURT: Show it to counsel first, please.

18 MR. PERRI: People's 12, I ask be marked. It
19 is a subset of the DNA report already in evidence.

20 THE COURT: Mr. Berger, is there any issue
21 with it going directly into evidence? It's already in
22 evidence as a larger packet.

23 MR. BERGER: Correct. No problem.

24 THE COURT: We'll put it into evidence as
25 People's 12.

1 (People's Exhibit 12 was marked and received
2 in evidence.)

3 MR. PERRI: I ask it be shown.

4 Q. Doctor, do you recognize what was marked as
5 People's 12?

6 A. I do.

7 Q. And what do you recognize it to be?

8 A. This is an electropherogram, and it is marked
9 2711-neg, which means negative. There's a date 11/14/2013,
10 and it's the panel, which is the type of testing, Wii file
11 letter two, and this is a negative control run with the
12 samples, at least in theory, and it should provide one of
13 the controls for running a STR result.

14 Q. Doctor, would that electropherograph, is that
15 consistent with being no DNA present?

16 A. Yes, I would say this is a good negative control.
17 It also has one, two, three, four obvious peaks on it.

18 Q. The four peaks you talked about, doctor, those
19 peaks, would they be classified as artifacts?

20 A. Most likely.

21 Q. And what is an artifact, doctor?

22 A. An artifact is a type of noise that the system
23 makes, but is not an authentic result from DNA.

24 Q. Doctor, you testified the vast majority of DNA
25 obtained from the vulva swab from the two stains, that was

1 the DNA of the victim in this case, Mya Ramirez?

2 A. I believe I said it was a female, that's correct.
3 That's where most of the DNA is from.

4 Q. Every time you said female, did you mean the
5 victim, Mya Ramirez, or who in the medical examiner's report
6 was classified as the victim, Mya Ramirez?

7 A. Yes, the alleged victim, however, it is supposed
8 to be said.

9 Q. That was also the finding of the medical
10 examiner's office, correct?

11 MR. BERGER: I object to the form of the
12 question.

13 THE COURT: Sustained as to form.

14 Q. The fact that the vast majority of DNA recovered
15 from the vulva swabs and two stains in Mya's underwear were
16 from the female victim in this case, that was also at the
17 conclusion of the medical examiner's office, correct?

18 A. The medical examiner did not explicitly make that
19 conclusion in the laboratory reports, to my knowledge, but
20 from the quantification, which you mentioned earlier, which
21 was performed, that would have been the conclusion if they
22 had written that in their report.

23 Q. From what you just said that the quantification,
24 the measurement, that the medical examiner's office did
25 measure the amount of DNA they found, correct?

Dr. Reich - Defense - Cross

1251

1 A. They measured the amount of DNA that is recovered.

2 Q. And that their measurement showed, just as your
3 conclusion, that the vast majority of the DNA was Mya?

4 A. That's where I got my conclusion from, that's
5 right.

6 Q. Doctor, if I licked someone's hand and hours later
7 you swabbed that area for DNA, would the owner of the hand
8 be the major -- would it be consistent that the major
9 contributor of the DNA in that swab would be the owner of
10 the hand?

11 A. Maybe. It would depend how much saliva you put on
12 there, whether you got it all up, how hard you rubbed the
13 swab. It could be.

14 Q. And just from what you just testified to, it would
15 appear that lots of activity after saliva is deposited, it
16 could have an effect on what is recovered from swabbing that
17 same area?

18 A. That's a fair statement.

19 Q. So, would urinating after saliva has been
20 deposited, would that effect the recovery of the saliva of
21 that area for a vulva swab?

22 A. Thank you. You were talking about hands for a
23 second.

24 Q. I apologize.

25 A. It could, although, technically urination would

Dr. Reich - Defense - Cross

1252

1 itself not be relevant. Maybe wiping afterwards, assuming
2 that was done thoroughly.

3 Q. If you thoroughly wiped afterwards, would that
4 remove DNA and saliva from the area?

5 A. DNA, perhaps, not but the saliva. It's possible.

6 Q. So perhaps, it's possible that they both could be
7 removed or they both could remain?

8 A. I think that's fair.

9 Q. Would the duration of contact, especially oral
10 sexual contact, effect the amount of saliva that is
11 deposited?

12 A. I think the length of time and how much saliva is
13 deposited is important.

14 Q. So would the longer you have oral sexual contact
15 deposit more saliva?

16 A. That's a good assumption.

17 Q. If it was very brief sexual contact, would you
18 deposit less saliva?

19 A. Likely.

20 Q. So that if someone was interrupted, only momentary
21 contact occurred, that would deposit less saliva and less
22 DNA?

23 A. Possible.

24 Q. Just talking about the transfer of DNA, more
25 generally, doctor, it's true DNA doesn't actually penetrate

1 layers of clothing, correct, under normal circumstances?

2 A. I'm not quite sure I understand the question.

3 Q. You testified about coughing transferring DNA. If
4 I were to be within a few feet of you, or right up close to
5 you and you coughed on me, would the DNA transfer from your
6 coughing, would that get through my jacket and my shirt,
7 down to my undershirt and my underwear?

8 A. Probably not through all of those layers, but
9 small particles go through fabric which is not uniform. It
10 has holes in it, it has a weave, but through multiple
11 layers, probably unlikely.

12 Q. Doctor, just some points to go over from your
13 testimony. Now, it was your testimony that the defendant's
14 DNA profile was a match for the Y-STR profile found in stain
15 1-A1; is that correct?

16 A. Forensic scientists don't like the word match, and
17 the DNA profile is not complete, but the identification of
18 Mr. Ramos is not in dispute. Certainly, the results are
19 consistent with the haplotype from Mr. Ramos.

20 Q. With respect to the stain 1-A2, your testimony was
21 that the DNA of the major Y-STR contributor, minor,
22 autosomal contributor of stain 1-A2 was the defendant,
23 correct?

24 A. It's consistent with Mr. Ramos's profile. That's
25 correct.

1 Q. So you agree with respect to the conclusion the
2 medical examiner's office made regarding the profiles and
3 the matches developed for stains 1-A1 and 1-A2?

4 MR. BERGER: Objection, specificity. That's
5 too general a question.

6 THE COURT: You can rephrase it.

7 Q. With respect to stain 1-A1, do you agree with the
8 conclusion that the medical examiner's office made in
9 matching or comparing the profile of the defendant to the
10 Y-STR profile developed from the stain?

11 A. I believe, the medical examiner's DNA results in
12 terms of genetic identity, that Mr. Ramos is consistent with
13 the results they obtained.

14 Q. And with respect to stain 1-A2, I ask you the same
15 question about agreeing with the medical examiner's
16 determination with matching the Y-STR major contributor and
17 the minor on the autosomal contributor, both of those to the
18 defendant?

19 A. It's called comparing. We don't use the word
20 match, but if, in fact, if you compared it, the haplotypes,
21 Mr. Ramos is not excluded.

22 Q. And you agree there was a positive indication for
23 the presence of saliva on the vulva swab on stain 1-A1 and
24 1-A2?

25 A. The laboratory report states that the test for

1 saliva was positive.

2 Q. So, apart from your testimony about the
3 sub-straight control, you found no other problems with how
4 the evidence was handled and tested by the medical
5 examiner's office, correct?

6 A. Problems. It was unusual that the size of the
7 underwear exhibit was the size of the area that was excised
8 is unusual. I'm not sure it's a problem. It's a very large
9 area of the underwear. Usually stains are much smaller.
10 They're the size of a dime or a quarter, maybe a fifty cent
11 piece. This is a very large area that was dissected and
12 analyzed. It's unusual. A problem, probably not.

13 Q. And you didn't see any problems with the equipment
14 noted in the records that you examined?

15 A. I was not provided with the official documentation
16 for that, but there was no reason to think there was a
17 problem with the instrumentation.

18 Q. Did you notice any problem in the execution of the
19 test, according to the records you examined?

20 A. I did not.

21 Q. Now, your lab would have been capable of doing the
22 sub-straight control test, correct?

23 A. Any lab is capable of performing the sub-straight
24 control.

25 Q. Your lab would be capable, correct?

1 A. Yes, absolutely.

2 Q. Was your lab -- did you conduct a sub-straight
3 control test?

4 A. We did not receive any items of evidence in this
5 case, as I stated earlier, nor did we do any testing in this
6 case.

7 Q. Did you recommend to defense counsel to conduct a
8 sub-straight control test?

9 A. I did not. I was not asked to provide that
10 information, and the testing had already been performed.

11 Q. And did defense counsel request of you to conduct
12 what you deemed a critical test to be done?

13 A. Certainly not.

14 Q. So with respect to the concerns you voiced, did
15 you remember during your testimony about some of the
16 conclusions that were made, your concern is that it's a
17 coincidence that the defendant's DNA profile was found in
18 Mya Ramirez's underwear along with saliva?

19 A. No, I did not say that.

20 Q. And as the DNA found in the saliva stains comes
21 from epithelial cells, you cannot state to a scientific
22 certainty what the origin of the surrounding saliva is,
23 correct?

24 A. I'm sorry, I did not understand that question.

25 Q. You cannot identify definitively the source of any

Dr. Reich - Defense - Redirect

1257

1 of the saliva in this case, correct?

2 A. Nobody can. It's not possible using the
3 techniques that are available to forensic labs, no.

4 Q. You cannot identify whether it was male or female
5 saliva, correct?

6 A. No. We can only make an inference from the
7 quantity of the DNA that was identified.

8 Q. Other than that inference, you don't have any
9 scientifically definitive result?

10 A. No more than what was presented in the laboratory
11 reports.

12 MR. PERRI: Nothing further, your Honor.

13 THE COURT: Thank you. Redirect.

14 REDIRECT EXAMINATION

15 BY MR. BERGER:

16 Q. Dr. Reich, you were asked before about having made
17 an educated guess about something; what was that about?

18 A. I believe I was asked as to why the laboratory,
19 the office of the medical examiner, County of Nassau
20 Laboratories, made its conclusions on the trace amounts of
21 DNA identified on the vulva swab using Y-STR. I'm sorry for
22 the length of that answer.

23 Q. In other words, you made an educated guess why
24 they would say it was male DNA on the supposed trace
25 materials?

1 A. That's correct.

2 Q. Even though you told us on direct examination that
3 the trace materials were insufficient and weren't put in the
4 report?

5 A. They were, because they're not in the report.
6 That's not an educated guess, that's just what is in the
7 reports.

8 Q. When you gave us your opinions, when you gave me
9 your opinions this morning, you were doing that based upon
10 the documents provided to you through me, received from the
11 district attorney's office, correct?

12 A. From you. That's all I can say.

13 Q. Right, okay. And have any of the opinions you
14 gave before on direct examination changed as a result of the
15 questions that were propounded to you by Mr. Perri?

16 A. No.

17 Q. With the exception of the fact that with respect
18 to exhibit B, you had assumed they were all in connection
19 with this case?

20 A. I made an error when I was asked to write on that.
21 At the last moment the documentation that was provided has
22 the results from multiple cases, and I scribbled too quickly
23 and that was my error.

24 Q. With respect to the section of that page that you
25 scribbled accurately, does that change any of your answers?

1 A. No. If I could go back and look at the other part
2 of the page, which had the rest of the data, it would be the
3 same conclusion.

4 Q. Now, Mr. Perri asked you about how you came to the
5 conclusion with respect to the Y-STR testing and you
6 referred to the allele summary at the end; do you remember
7 that?

8 A. Okay.

9 Q. Could you find that in the exhibit before you?

10 A. I could find the laboratory reports.

11 Q. Where you were referring to the allele summary at
12 the end.

13 A. Certainly. Do you want me to turn to them?

14 Q. Yes, please. Can you identify -- is there a page
15 number there?

16 A. So, there are two laboratory reports, one dated
17 February 27, 2014, and one dated February 28, 2014.
18 Laboratory reports are often in this format where there is a
19 summary of results and interpretation, which is words and
20 then later on, there are these tables. I know you can't see
21 them, but there is a summary of the actual allele results
22 that the laboratory obtained. You recall from the
23 electropherogram I showed you, some of those peaks had
24 little boxes underneath them and some of the boxes had
25 numbers. Those numbers end up on this table. So this is

1 called an allele summary. Both of the reports have allele
2 summaries. Some of the data between the reports are shared,
3 some of them are new, depending upon the report, and those
4 are the allele data.

5 Q. So the allele summary you were referring to before
6 with Mr. Perri, which document was that, the 27th or the
7 28th?

8 A. In this case it would be either because neither
9 report has the Y-STR results that were below the laboratory
10 interpretation guidelines for sample 1-F, the vulva swabs.

11 Q. So, when you look at the allele summary, neither
12 one of them has the so-called trace male DNA there, does it?

13 A. Correct. Those results, which the lab did not
14 wish to interpret, are not in the allele summaries.

15 Q. And the allele summaries are obtained how, doctor?

16 A. They are made by the laboratory, and they are a
17 summary of the results that they wish to report.

18 Q. So, the conclusion by Mr. Chillseyzn about male
19 DNA being on the vulva swab, is not contained in the allele
20 summary, correct?

21 A. That is correct.

22 Q. Would a scientist taking a look at those allele
23 summaries set forth what Mr. Chillseyzn did with respect to
24 claiming there was male DNA there?

25 MR. PERRI: Objection.

1 THE COURT: Sustained as to form.

2 Q. Doctor, would you with a reasonable degree of
3 scientific certainty, ever make a claim that there was male
4 DNA there based upon the allele summary you see?

5 A. Our interpretation guidelines are, I wouldn't say
6 more strict, but they're more strict, and if we do not feel
7 the results are interpretable, we would not report them.

8 Q. So both of those alleles, those summaries, in both
9 reports, do not reflect any male DNA from the Y-STR testing,
10 correct?

11 A. From that particular sample, that is correct.
12 Other samples did have a Y, as we talked about earlier, but
13 that sample did not.

14 Q. That one that refers to the vulva swab?

15 A. The 1-F.

16 Q. Mr. Perri asked you about ascribing a number for
17 the Y-STR on the vulva swab?

18 A. Correct.

19 Q. Does it mean anything to put a number on it?

20 A. There is a number that the lab generates when they
21 quantify. That's the term, the amount of DNA they recover.
22 That number is useful for the laboratory to determine how
23 much to put in to the reaction to generate the profile, but
24 the technical reasons about how to interpret that number are
25 complicated.

1 Q. So, even if there is a number, there is still
2 standards by which you determine if the number sufficient to
3 even make, or draw a conclusion?

4 A. Correct. Most laboratories do not use the
5 quantitation number for interpreting in their final report.
6 It's used as a step in the laboratory.

7 Q. So it's a step?

8 A. It's a step.

9 Q. Doctor, how long, if you sneezed, or you coughed,
10 or you put your fingers in your mouth, how long could saliva
11 remain on your hand, or your arm, or whatever?

12 A. If you don't wash it, a long time.

13 Q. And by a long time?

14 A. Many hours.

15 Q. And many hours, could that be ten hours?

16 A. There is no good studies, but there are many
17 examples of sexual assaults where the alleged victim is
18 swabbed many hours after the alleged incident; licking, for
19 example, and they can identify saliva and identify DNA. So,
20 it can be many hours.

21 Q. And if someone didn't urinate, then it might be
22 longer. You indicated that might cleanse the area in some
23 way?

24 A. I tried to be specific. I think the actual fact
25 of urination because the female anatomy doesn't necessarily

Dr. Reich - Defense - Redirect

1263

1 rinse the outer layers of the skin, but if you wiped after
2 urination, then that would remove some of the DNA and more
3 of the saliva that would remove more of the DNA.

4 Q. Could you tell what you saw with respect to the
5 analysis of the vulva swab and the two other stains, how
6 could a touch DNA, even though you testified that you
7 couldn't -- it doesn't pass the test, how could touch DNA
8 get on the vulva area and swab area?

9 MR. PERRI: Objection.

10 THE COURT: Sustained.

11 Q. Assume what the prosecution's witness,
12 Mr. Chillseyzn, said that there was male DNA on the vulva
13 area, how might that get there if it was touch DNA with a
14 reasonable degree of scientific certainty?

15 MR. PERRI: Objection.

16 THE COURT: Sustained.

17 Come up. Off the record.

18 (Whereupon, there was an off-the-record
19 discussion.)

20 Q. If some male handled or touched the underwear in
21 this case, I think from your testimony you might expect some
22 DNA to be there from that male, correct?

23 A. That would not be unexpected.

24 Q. Not be unexpected?

25 A. Right.

1 Q. How would that DNA get to the vulva swab, if at
2 all?

3 A. Well, we can imagine at least one scenario where
4 the DNA of Mr. Ramos ends up on the underwear because he's
5 handled it. We already talked about how that is possible,
6 and then if you pull the underwear on, then you are rubbing
7 the fabric against the skin of the person who is wearing the
8 underwear and the DNA can transfer.

9 Q. You were asked by Mr. Perri with respect to
10 drawing an inference from the quantity of the saliva and the
11 tests there, and you made an inference that the saliva on
12 the vulva swab was from the female, correct?

13 A. Almost.

14 Q. Go ahead.

15 A. I was asked whether you could measure the amount
16 of saliva and you can't. There are many reasons you can't
17 do that, but the inference was the quantity of the male DNA
18 on the various samples versus the inference that it was male
19 saliva versus female saliva. And I still hold because the
20 test is, in fact, extremely sensitive, and it's easy to get
21 DNA profiles from very small amounts of saliva, that the
22 majority of DNA is female, we all agree and that is the most
23 likely source of the saliva.

24 MR. BERGER: Thank you, doctor. Nothing
25 further.

Dr. Reich - Defense - Recross

1265

1 THE COURT: Any recross?

2 MR. PERRI: Yes, your Honor.

3 RECROSS-EXAMINATION

4 BY MR. PERRI:

5 Q. Doctor, in the report that you read from on
6 redirect, noting the section that had the allele summary in
7 it, in that same report, on page 2, does it not note that
8 Y-STR typing was done on the vulva swab, that peaks were
9 detected, no, they did not meet the laboratory criteria for
10 identification, and therefore, they were not reported. Does
11 that not appear in the same documents that you read from?

12 A. I'm going to confirm that, if I might. I believe,
13 you are referring to the February 27, 2014 report?

14 Q. Yes.

15 A. The page you are referring to is the second page
16 of seven.

17 Q. Yes.

18 A. So it absolutely states that the presence of
19 saliva was indicated on the vulva swab obtained from the
20 victim and Y-STR typing was done. Peaks were detected,
21 which did not meet the laboratory criteria for allele
22 identification. Therefore, these peaks are not reported.

23 Q. Doctor, you also testified most laboratories do
24 not use the quantification number, but you didn't say there
25 wasn't anything wrong with using the quantification number?

1 A. I did not say that. That's not true. All
2 laboratories use the quantification number but they don't
3 necessarily use it to draw conclusions in the final report.
4 It's used during the processing steps of the sample.

5 Q. You didn't say that there was anything wrong with
6 using the quantitative number?

7 A. It's not wrong, but there is a reason laboratories
8 are reluctant to use that, and that number is plus or minus
9 two or three-fold for the total amount of DNA. That may
10 sound like a big range, but it is so much better than the
11 method we had seven years ago, and the number you get for
12 the Y is not as good as that. It's technical why that is.
13 We use it for the processing. I don't believe I have ever
14 seen a conclusion in a lab report based on the
15 quantification data alone.

16 Q. Doctor, in supporting your inference about your
17 inference that the saliva was from the female victim, you
18 noted that the test was exquisite, that is the test that you
19 sell, correct?

20 A. It's the test we develop and we also sell it. We
21 produce it as well.

22 MR. PERRI: Nothing further.

23 THE COURT: All right. Thank you very much,
24 doctor. You may step down. Please be very careful.

25 It's two steps.

Proceedings

1267

1 Let me see the attorneys at the bench for a
2 moment.

3 We have been working about an hour, ladies
4 and gentlemen. Rather than have a conversation with
5 the attorneys at the bench, let me give you this
6 opportunity to stretch your legs and move around a
7 little bit, use the facilities if you need to.

8 Please remember not to talk about the case
9 during the short break. Don't let anyone else talk to
10 you about it. Don't get on your phone and research.
11 See you in five to ten minutes. Thank you.

12 (Whereupon, the jury exited the courtroom.)

13 THE COURT: Are you going to have anymore
14 witnesses, Mr. Berger?

15 MR. BERGER: I will.

16 THE COURT: People, Mr. Berger made a request
17 of the Court to allow for rebuttal, if you were looking
18 to have rebuttal to go in out of order. Is it your
19 intention to have a rebuttal witness on this DNA issue?

20 MR. PERRI: Could I have five minutes to
21 discuss that?

22 THE COURT: You certainly can.

23 MR. PERRI: Then let me know and we'll talk
24 about it before the jury comes back.

25 (Whereupon, a short recess was taken.)

1 THE CLERK: Case on trial continued,
2 Indictment 742N of 2014, People of the State of New
3 York vs. Daniel Ramirez.

4 Let the record reflect all parties present,
5 and the jury is not present at this time.

6 Are the People ready?

7 MR. PERRI: Yes, your Honor.

8 MR. BERGER: Yes, ready.

9 THE COURT: When we broke I asked you if you
10 had intended on making an application to the Court for
11 a rebuttal witness.

12 MR. PERRI: Yes, the People would ask the
13 Court to allow Mr. Christopher Chillseyzn to testify to
14 two specific issues that were raised by the defense
15 about the case. Specifically, the question of the
16 peaks versus the noise in the Y-STR, typing done on the
17 vulva swab, and the People's conclusion based on that
18 as to why there was male DNA there.

19 And in the second point with respect to
20 saliva to rebut the argument by defense counsel's
21 expert that a conclusion could be made that the saliva
22 came from the female, that it would be for those two
23 points, your Honor.

24 THE COURT: To say the saliva came from the
25 female?

Proceedings

1269

1 MR. PERRI: The defense expert testified it
2 was saliva and was able to be identified as from the
3 female source.

4 THE COURT: And you want to counter that?

5 MR. PERRI: Yes, your Honor.

6 THE COURT: I'll hear from you on whether you
7 think it's proper.

8 MR. BERGER: Are you evaluating whether you
9 want to allow --

10 THE COURT: Correct, I haven't said I will
11 allow the rebuttal witness yet.

12 MR. BERGER: From Mr. Chillseyzn's own words,
13 his testimony on his direct examination as part of the
14 People's case acknowledged that the saliva came from
15 the complainant in this particular case. I'm sorry I
16 forgot Mr. Perri's first argument, which was to cover
17 -- which point was that? The second one I understand.

18 THE COURT: The first is peaks versus noise
19 and the vulva swab, and why they could say it was male
20 DNA.

21 MR. PERRI: Specifically, that defense
22 counsel's expert's conclusion about the peaks versus
23 noise is incorrect.

24 MR. BERGER: I'm not sure it's proper
25 rebuttal. That I have no response to. I do know he

1 has acknowledged in his own direct exam that the vulva
2 swab had the saliva of the complainant.

3 MR. PERRI: That is not the People's
4 recollection of the testimony, that at no point did the
5 People's expert identify the source of the saliva.
6 They only said there was saliva indicated on the vulva
7 swab taken from the complainant/the victim, in this
8 case, and that there was indication of male DNA, of
9 Y-STR present on that same saliva. He did not make any
10 conclusion with regard to the origin of the Y-STR DNA,
11 or the saliva contained on that swab, your Honor.

12 MR. BERGER: Judge, my recollection was that
13 he said saliva -- he used the word victim. I don't
14 think that was the appropriate word. He did use that
15 word and to be expected, my recollection is his
16 language was it was saliva from the victim and it was
17 to be expected.

18 THE COURT: The use of rebuttal testimony, as
19 you know, is at the discretion of the Court, and there
20 has to be very specific areas that need to be rebutted,
21 so there is contradicting witnesses, corroborating
22 rebutting parties, witness after attack, denying
23 affirmative facts attempted to be proved by an adverse
24 party. Even if I find some appropriate rebuttal area
25 has been laid out, it doesn't necessarily mean that the

1 Court has to grant calling a rebuttal witness based on
2 the testimony before the Court, should the Court feel
3 it's going to go so far afield that it would be
4 inappropriate. Also, there is no right to repeat any
5 evidence.

6 So the Court's ruling with regards to the
7 People's application to call a rebuttal witness in this
8 matter, in the two areas put forth at this time, is
9 denied.

10 People, do you want to make your record
11 noting your exception to the ruling?

12 MR. PERRI: Your Honor, the People would just
13 note that these are absolutely central facts at issue
14 in this case that were not directly addressed by the
15 People's witness on the original testimony. The
16 People's expert did not testify as to the
17 identification of the saliva, and defense counsel's
18 expert claimed he is able to identify the origin of
19 saliva.

20 Additionally, defense counsel raised for the
21 first time the question of the Y-STR, the methodology
22 exactly of the quantification of the Y-STR DNA. This
23 was not testified to in the People's original case.

24 The People would employ the Court to
25 reconsider their ruling.

D. Ramos - Defense - Direct

1272

1 MR. BERGER: I respectfully disagree and
2 suggest that the recollection by Mr. Perri is
3 inaccurate.

4 THE COURT: All right. I appreciate both
5 sides request and positions with regard to this matter.
6 I still don't feel a rebuttal is appropriate at this
7 time, so I will note your exception to my ruling for
8 the record, but your request is denied.

9 MR. PERRI: Yes, your Honor.

10 MR. BERGER: May we step up?

11 THE COURT: Yes, and then we'll call the jury
12 in and get started on your next witness.

13 (Whereupon, there was an off-the-record
14 discussion.)

15 (Whereupon, the jury entered the courtroom.)

16 THE CLERK: Do both sides stipulate all sworn
17 jurors are present?

18 MR. PERRI: Yes, your Honor.

19 THE CLERK: Defense counsel?

20 MR. BERGER: Yes, your Honor.

21 THE COURT: Welcome back everyone. We're
22 going to continue right along.

23 Mr. Berger, for the record, call your next
24 witness.

25 MR. BERGER: Daniel Ramos.

D. Ramos - Defense - Direct

1273

1 D A N I E L R A M O S, the defendant, called on behalf of
2 the Defendant, having been duly sworn, took the witness
3 stand and testified as follows:

4 THE CLERK: Mr. Ramos, please state your full
5 name and spell your last name for the court record.

6 THE WITNESS: Daniel Ramos, R-A-M-O-S.

7 THE COURT: You may inquire.

8 DIRECT EXAMINATION

9 BY MR. BERGER:

10 Q. Mr. Ramos, are you an American citizen?

11 A. Yes.

12 Q. When did you arrive in this country?

13 A. In 1989.

14 Q. And when you arrived here, did you obtain
15 employment?

16 A. No. I spent a few months with work.

17 Q. At some point in time, did you start working?

18 A. Yes.

19 Q. What kind of work did you do?

20 A. I was working sweeping floors at a factory.

21 Q. And after that?

22 THE INTERPRETER: The interpreter needs
23 qualification.

24 A. I came after that. I got my license, and I went
25 to work at a place where they make cakes, things like that.

D. Ramos - Defense - Direct

1274

1 Q. And after that?

2 A. First I got my license and then I first got a
3 regular driver's license, and then I got my commercial
4 driver's license, and I went to work for a company named
5 Helicas in Hempstead.

6 Q. How long have you had your driver's license?

7 A. Maybe from 2000 up to now.

8 Q. When did you marry?

9 A. I don't remember for sure, but maybe in 2004,
10 2005.

11 Q. Mr. Ramos, do you have children?

12 A. I have two.

13 Q. And you have two with what woman?

14 A. I have two with Juna Antonia Argueta.

15 THE INTERPRETER: A-R-G-U-E-T-A.

16 Q. She is still your wife?

17 A. Yes.

18 Q. Did you say you married her in 2004, or was that
19 before that?

20 A. I'm not too sure. I don't remember. Maybe 2003.
21 I don't remember.

22 Q. Now, did both you and your wife raise your two
23 boys?

24 A. Exactly.

25 Q. And you worked from the time, with the exception

D. Ramos - Defense - Direct

1275

1 of a few months, from the time you arrived here until
2 October of 2013, to support your family and your boys?

3 A. Exactly.

4 Q. When did you meet your wife?

5 A. We met, I actually met her in 1991 -- 1981, in the
6 middle of 1981.

7 Q. You have known her all of these years up until
8 now, correct?

9 A. Exactly.

10 Q. Now, when you worked with your commercial license,
11 did you ever drive children?

12 A. Yeah, I work for a few months, four to six months
13 with a company that is here in Hempstead called Atlantic
14 Express -- in Oceanside.

15 Q. Who did you drive when you drove these commercial
16 buses? Were you ever driving children?

17 A. Yes, I remember that.

18 Q. And how long was it that you drove children?

19 A. Including the one on Atlantic Avenue total -- no,
20 no, not Atlantic Avenue, Atlantic Express.

21 Q. For how long?

22 THE INTERPRETER: The interpreter needs
23 clarification.

24 A. I don't remember exactly. I would say about two
25 or three months. Two months.

D. Ramos - Defense - Direct

1276

1 Q. Two months, and you drove children in what
2 circumstance?

3 A. My company required for us to pick up the children
4 for school.

5 Q. And was that for just two or three months, or was
6 it for a longer period of time?

7 A. I'm not too sure. I think it was about two or
8 three months, and then I changed to another company.

9 Q. And what did you do with that other company?

10 A. The same, transporting children to go to school.

11 Q. So, I'm not asking you, I'm asking you in total,
12 without regard to how many companies you worked for, in
13 total how many years, or months, or years did you drive
14 children?

15 A. Like I said before, I worked for Atlantic Express
16 transporting children, and then I also worked for Acme, also
17 for transporting children to go to school, and then I left
18 Acme and I went to MTA.

19 Q. And for MTA, did you drive children, or was it
20 different?

21 A. With MTA I worked for Able Ride, and those I was
22 working with handicap people.

23 Q. You were driving handicapped people with that
24 company?

25 A. Yes.

D. Ramos - Defense - Direct

1277

1 Q. Did you ever receive any awards or accommodations
2 from your bus company?

3 MR. PERRI: Objection.

4 THE COURT: Sustained.

5 Q. Mr. Ramos, prior to October of 2013, had you ever
6 been arrested before?

7 A. Never.

8 Q. Mr. Ramos, you do speak some English, or you did,
9 rather, in October of 2013; did you not?

10 A. Basic, yes.

11 Q. Were you able to read English?

12 A. Not really.

13 Q. You are more comfortable speaking and
14 understanding Spanish?

15 A. Correct.

16 Q. You have been incarcerated since October of 2013;
17 is that correct?

18 A. Correct.

19 Q. You lived in a house, did you not, in October of
20 2013?

21 A. Could you repeat the question? I did not
22 understand the question.

23 Q. Were you living in an apartment or a house in
24 October of 2013?

25 A. A house.

D. Ramos - Defense - Direct

1278

1 Q. With your wife?

2 A. Yes.

3 Q. And were any of your sons there?

4 A. One, yes.

5 Q. Carlos?

6 A. Yes.

7 Q. Now, when did you move -- what is the address of
8 that house?

9 A. 781 Coolidge Road, Uniondale, New York 11553.

10 Q. And during the course -- when did you move in
11 there, by the way?

12 A. I don't remember the exact date, but I believe it
13 was between 2004 and 2005.

14 Q. During the course of that time, did you ever have
15 people, not your sons, but people with children living in
16 your house?

17 MR. PERRI: Objection.

18 THE COURT: Objection overruled.

19 A. My sister-in-law has one child.

20 Q. Anyone else?

21 A. No.

22 Q. Did you know Christy Hernandez?

23 A. Oh, yes.

24 Q. Did she reside in your house?

25 A. With my son because --

D. Ramos - Defense - Direct

1279

1 THE INTERPRETER: The interpreter needs
2 clarification, your Honor.

3 A. Yes, I know her. She got together with my son for
4 about two years, but I did not have that much contact with
5 them, because I did not want to get into my children's
6 problems.

7 Q. But her children were residing in the house?

8 A. Yes.

9 Q. Do you remember approximately how old they were?

10 A. I am not too sure exactly, but I believe one was
11 between ten and eleven, and the other was between eight and
12 nine.

13 Q. Mr. Ramos, do you know Crystal Ramirez?

14 A. Yes.

15 Q. And do you know her children?

16 A. Yes.

17 Q. Were there times when Crystal would be over at
18 your house?

19 A. She almost go once in a while when her ex-husband
20 was at the house, playing with my son Nintendo.

21 Q. Who was playing Nintendo with your son?

22 A. Christian Feliciano.

23 Q. Christian was a friend of your son Carlos?

24 A. They were friends since they were in school, since
25 they were children.

D. Ramos - Defense - Direct

1280

1 Q. Now, within a year or so, prior to October of
2 2013, Crystal was not living with Christian; is that
3 correct?

4 A. No.

5 Q. That is right?

6 A. Yes.

7 Q. So, does Crystal own a car?

8 A. No.

9 Q. So would Crystal call you up to drive her places?

10 A. Yes. She would call me when she needed me, my
11 help, yes.

12 Q. And did that happen often?

13 A. Yes, it would happen frequently.

14 Q. Did you ever lend Crystal money?

15 A. Yes.

16 Q. Did she pay you back?

17 A. No.

18 Q. Did you used to buy things for Crystal and her
19 kids?

20 A. When she would ask me, yes. And if I could, I
21 would buy it.

22 Q. Did you take Mya and Sincere to restaurants to
23 eat?

24 A. Yes.

25 Q. Was Crystal there all of the time or just some of

D. Ramos - Defense - Direct

1281

1 the time?

2 A. Sometimes.

3 Q. Sometimes it was just you taking the kids out for
4 dinner or food?

5 A. Yes, with her permission.

6 Q. And were there times that you would be asked by
7 Crystal to drive her to different places?

8 A. Yes.

9 Q. Could you tell us some of those situations?

10 A. I did not understand that question.

11 Q. Crystal asked you to drive her different places,
12 correct?

13 A. Yes.

14 Q. And did she ask you to take her to cousins or
15 friends' homes?

16 MR. PERRI: Objection. May we approach?

17 THE COURT: Yes.

18 (Whereupon, there was a sidebar discussion as
19 follows:)

20 MR. PERRI: Objection to the amount of
21 leading. This is his witness's direct. If he wants to
22 describe, he can describe. He does not need to be
23 spoon fed every action he has done for Crystal Ramirez.

24 On a second level, I just don't know where
25 this line of questioning with driving her places is

D. Ramos - Defense - Direct

1282

1 going. If we're going back to the whole question of
2 counseling, I want to address it now before it comes
3 up. There should not be testimony about children going
4 to counseling or what the substance of what that
5 counseling was.

6 THE COURT: With regards to the leading,
7 which is before me now, try not to lead. I understand
8 that situation, but I'll take objections to that, and I
9 understand that's what the basis would be. You are on
10 notice.

11 With regards to questions related to
12 counseling, I'm not going to allow leading on that, but
13 I don't have a question before me yet, and I don't have
14 an objection before me yet, so I'll entertain it at the
15 appropriate time.

16 MR. BERGER: I'm just laying a foundation as
17 to the relationship.

18 THE COURT: I understand.

19 MR. BERGER: As far as the counseling is
20 concerned, it's already in evidence, Crystal already
21 answered the question.

22 MR. PERRI: With the eliciting of the way
23 they know each other is through the father of the
24 children, is the brother of the younger son's
25 assailant, that's my concern, that we're not going down

kmm

D. Ramos - Defense - Direct

1283

1 that road.

2 MR. BERGER: I didn't hear you.

3 THE COURT: With regards to asking or getting
4 this witness to respond to non-leading questions about
5 driving to counseling, I don't have necessarily a
6 problem with it. His understanding of why they are in
7 counseling is not going to be touched because it's not
8 relevant. His understanding of what they are doing
9 there is not relevant..

10 MR. BERGER: I'm not asking about his
11 understanding. I'm asking about the conversation he
12 had with Crystal, just for the purpose of it being
13 said.

14 THE COURT: One at a time.

15 MR. BERGER: It's not coming in for
16 truthfulness, it's coming in for what was said. You
17 already ruled with respect to the records. I'm not
18 going to countermand that. I do have something related
19 to put on the record with respect to that. I'm not
20 going to ignore your ruling on that point.

21 THE COURT: Let's try to have a little less
22 leading. When the questions come up in this situation,
23 I'll allow you to normally -- I wouldn't normally allow
24 you to cut a witness off, but if you, Mr. Berger, if
25 you think the question will do something improper with

D. Ramos - Defense - Direct

1284

1 regards to conversation, you'll react the way you need
2 to react and you will react the way you need to. I'll
3 rule, but I won't cross the bridge before I get it.

4 MR. PERRI: The relevancy of whether or not
5 Crystal reported that her younger son was molested when
6 he, in fact, was and he pled guilty.

7 THE COURT: I understand. I don't think it's
8 the proper question. I don't have the question before
9 me to rule on. I would agree there is a lack of
10 relevancy as to Crystal Ramirez's statement as to why
11 the children are in counseling. That, I don't see that
12 being proper, but I don't know the way in which it has
13 been asked. I don't have the background that might
14 lead to it. It might change that opinion. In general,
15 I agree that would not be proper.

16 MR. BERGER: If you recall on this point, if
17 you recall, Crystal Ramirez was asked that question and
18 she said, he knows, referring to Daniel Ramos. I asked
19 it, does Daniel know why the kids were in counseling,
20 and she said, he knows.

21 THE COURT: The fact that she said he knows
22 doesn't necessarily mean it becomes relevant as to what
23 it is he believes he knows. I don't see it necessarily
24 playing a part in this case. Again, it's not before me
25 now, but I don't necessarily see that it's relevance.

kmm

D. Ramos - Defense - Direct

1285

1 I don't know how you will develop your line of
2 questioning with this witness.

3 MR. BERGER: Okay.

4 (Whereupon, the proceedings resumed.)

5 THE COURT: You can re-ask your last
6 question.

7 DIRECT EXAMINATION

8 BY MR. BERGER: (Continuing)

9 Q. Mr. Ramos, when I asked you a question, respond to
10 the person who is asking the question, me. So, speak up
11 louder, okay? Do you understand?

12 A. In Spanish?

13 Q. Of course.

14 A. Okay.

15 Q. Speak up. Mr. Ramos, do you remember driving
16 Crystal to various friends and relatives' houses?

17 A. Yes, of course.

18 Q. And did you do that because she asked you to?

19 A. Yes, she would ask me to.

20 Q. And sometimes she would ask you to leave her there
21 and you would be with the kids?

22 A. Sometimes, but not all of the time.

23 Q. There were times when she would ask you to
24 baby-sit for the kids because she was going out.

25 A. A few times.

D. Ramos - Defense - Direct

1286

1 Q. During those times, did you have an occasion where
2 she wanted you to go someplace and leave the kids in the
3 house?

4 THE INTERPRETER: Your Honor, can the
5 interpreter have the question?

6 MR. PERRI: Objection.

7 THE COURT: I'll sustain the objection as to
8 form. Let's ask the question in a different way.

9 Q. Do you recall when she asked you to go to Long
10 Beach?

11 A. Yes.

12 Q. What were those circumstances?

13 A. It was one time that she asked me to go pick up
14 the children by a cousin in Long Beach.

15 Q. And what happened?

16 A. I told her that I didn't feel like going because
17 it was too far and because she also asked me to take them to
18 Lindenhurst where she was.

19 Q. Go on.

20 A. I told her I did not want to go and she told me,
21 don't be a faggot, go get them and bring them to me.

22 Q. What did you do?

23 A. I told her, okay. I'll go ahead and pick them up
24 in Long Beach and I will call you when I have the kids.

25 Q. And what happened after that?

D. Ramos - Defense - Direct

1287

1 A. I went to the cousin. She gave me the address for
2 the cousin. I went to the cousin, and I told her that she
3 told me to come and pick up the kids.

4 Q. And did you?

5 A. I went and picked them up, we called her, and I
6 asked her where she wanted me to take them, to the house or
7 to where she was at the time.

8 Q. And what happened?

9 A. And she told me to take them to Lindenhurst where
10 she was with a friend, and then I took them and that was at
11 night. And I took them, and when I got to Lindenhurst I
12 told them, here are the children, and she was drinking
13 because she likes to drink.

14 MR. PERRI: Objection.

15 A. And I told her, what are you going to do, are you
16 going to stay here with the children?

17 THE COURT: There's an objection. The
18 objection is sustained. Please ask your next question.

19 Q. Mr. Ramos, was there ever a time -- you have been
20 to Crystal's house before, have you not?

21 A. Several times, yes.

22 Q. Did she ever ask you to drive her someplace from
23 her house?

24 A. There were times that she asked me to take her to
25 do laundry, to buy things, to the clinic, to buy food for

D. Ramos - Defense - Direct

1288

1 the children. Um, many places, many, many places, like
2 restaurants to buy food for the children, but different
3 days.

4 Q. Right. Did you buy the food for the children?

5 A. Me or her?

6 Q. Did you buy the food for the children?

7 A. Sometimes I would buy the food for the children
8 and for her too.

9 Q. Did she ever repay you?

10 A. No, never.

11 Q. Did she ever ask you to drive her someplace and to
12 leave the kids in the house?

13 MR. PERRI: Objection.

14 THE COURT: Sustained as to form.

15 Q. In those times that you drove her places, did she
16 ever leave the children in the house?

17 MR. PERRI: Objection.

18 THE COURT: Approach.

19 (Whereupon, there was a sidebar discussion,
20 as follows:)

21 MR. PERRI: My objection is based on
22 relevance. This has gone far afield. The question has
23 gone far afield from the relationship between Crystal
24 and the defendant. We're now discussing whether or not
25 Crystal is a good mother. It's not a relevant issue

D. Ramos - Defense - Direct

1289

1 before the jury.

2 THE COURT: I'll allow counsel to develop a
3 little more. You will be able to cross-examine as to
4 how you see fit. I'll tell you now, because I do see
5 where we are going down the road. Don't try to elicit
6 any information about why those children are in
7 therapy.

8 MR. BERGER: I'm not. I'm not going there,
9 Judge.

10 (Whereupon, the proceedings resumed.)

11 THE COURT: He can answer.

12 A. What was the question? I'm sorry, again?

13 Q. Was there ever a time when Crystal wanted you to
14 drive her someplace and leave the children in the house?

15 A. It was only one time when she asked me, and she
16 said she just wanted to go out for a while and have a good
17 time at a nightclub. And she asked me to take her to a
18 friend, a female friend's house, and she left the children
19 alone at home.

20 MR. PERRI: Objection.

21 A. And I told her it was not good to leave the
22 children at home.

23 THE COURT: Objection to the last part of
24 that statement. It is sustained. The last part of
25 that answer is stricken. Next question.

D. Ramos - Defense - Direct

1290

1 Q. She wanted you to take her to a nightclub,
2 correct?

3 MR. PERRI: Objection.

4 THE COURT: Sustained as to leading.

5 Q. Tell us what happened after she asked you to take
6 her to the nightclub.

7 A. When she left the children alone at home, I told
8 her she could not leave the children alone at home because
9 it was too dangerous to leave them at home alone. She told
10 me to take her to the nightclub because it was only going to
11 be about ten, fifteen minutes that they were going to be
12 alone. I did not want to take them because I did not want
13 the children to be alone because it's too dangerous.

14 MR. PERRI: Objection.

15 THE COURT: Objection sustained to the last
16 portion of that answer, and that last answer is
17 stricken.

18 Q. After you told Crystal not to leave the children
19 alone, what did she say?

20 MR. PERRI: Objection.

21 THE COURT: Sustained.

22 Q. Did you end up leaving the children alone?

23 A. Yes, because she asked me to.

24 Q. Would you go back to the house to baby-sit
25 afterwards?

D. Ramos - Defense - Direct

1291

1 A. A few hours, yes.

2 Q. So the children were left alone for a few hours?

3 MR. PERRI: Objection.

4 THE COURT: Sustained as to leading.

5 You can rephrase it, counselor.

6 Q. So you told us she said it would only be fifteen
7 minutes; do you remember saying that before?

8 A. Yes.

9 Q. How long was it actually that they were left
10 alone?

11 A. Approximately, twenty to twenty-five minutes.

12 Q. And after that -- who came back to the house after
13 twenty to twenty-five minutes?

14 A. She gave me the keys to the house and told me to
15 stay a few hours with the children while she would come back
16 from the bar.

17 THE COURT: Mr. Berger, you don't have to
18 stop yet. Find a good place to break when appropriate
19 in your questioning.

20 MR. BERGER: This is fine.

21 THE COURT: All right, ladies and gentlemen,
22 let me give you those admonitions that you probably
23 know by heart.

24 Please remember to keep an open mind
25 throughout the trial. Do not discuss the case amongst

1 yourselves or with anyone else during the trial. Do
2 not permit anyone to discuss the case in your presence.
3 Do not talk to the lawyers, witnesses, or the defendant
4 about anything during the trial, and do not visit or
5 view the place where the charged crime was allegedly
6 committed, or any other place involved in the case.

7 If there is any news coverage of the case, do
8 not read, view, or listen to any accounts or
9 discussions of the case reported by the news media.

10 Do not attempt to research any of the facts,
11 issues, or law related to this case, whether by
12 discussion of others, by research in the library, or on
13 the Internet, or any other means or source.

14 Have a great night. See you all tomorrow
15 morning at 10:00 a.m. Thank you.

16 (Whereupon, the jury exited the courtroom.)

17 THE COURT: You may take your seat,
18 Mr. Ramos.

19 Anything for the record before we break for
20 the day?

21 MR. PERRI: As far as scheduling?

22 MR. BERGER: I see Mr. Perri is objecting to
23 questions that I'm going to try to elicit from the
24 witness to explain the relationship between the
25 defendant and the children and Crystal. I understand

1 that Crystal Ramirez is making -- is part of the
2 People's case in which they are trying to make the
3 defendant out to be somebody that did something
4 terrible to Mya Ramirez.

5 I'm trying to paint a more accurate picture
6 of what the relationship was about, that, in fact, it
7 was Mr. Ramos who was good to these children and that
8 it was Crystal Ramirez who was irresponsible. We have
9 endeavored to convince the Court that Mya -- I mean,
10 Crystal Ramirez acted the way she did on October 16,
11 2013, because of a previous experience with her older
12 son. Your Honor has ruled that we can't go into that,
13 among other things, your reasons were that previous
14 allegations, and the previous instance with her son was
15 too remote. I think the period was approximately six
16 years.

17 I considered what you said yesterday when I
18 made the application, and I'm suggesting to the Court
19 to reconsider because it's not too remote. In fact,
20 these kids are in therapy based upon the fact that her
21 son was in fact abused by his uncle. I'm sure there
22 are other reasons, as well, but it's not remote because
23 as of October 16, 2013, these kids were still in
24 therapy. Mya was as well. It doesn't really matter
25 that Mr. Perri points out that Mya wasn't even born

1 when the abuse to Sincere occurred. Something is going
2 on in this family that makes this family, from my
3 perspective, a very dysfunctional family that causes
4 Crystal to act the way she did on October 16th, and you
5 had the records and had the opportunity to look at
6 those records. I still think it's a relevant
7 consideration as to whether or not this is a
8 dysfunctional family or not, and I would respectfully
9 urge the Court to consider that it is not remote, that,
10 in fact, it's right up until that very day of the
11 incident these kids were going to therapy.

12 If your Honor denies the application to bring
13 back Crystal for me to cross-examine her with respect
14 to her son, I would ask the Court to make a Court
15 Exhibit of the records that were subpoenaed by the
16 child -- South Shore Child Guidance Center, and they be
17 made part of the record so that if there is an appeal,
18 the Appellate Court could take a look at those records
19 and see whether or not there is any merit to my
20 application at all. Thank you, Judge.

21 THE COURT: People.

22 MR. PERRI: Your Honor previously ruled on
23 this multiple times, and just for the record, your
24 Honor put on the record the reasons, the various
25 reasons the children were in therapy. They were not

1 necessarily connected to the alleged sexual abuse. The
2 People stated it was our belief there were reasons why
3 the children were in therapy. You inspected the
4 records. The test is not whether or not they would be
5 useful to a -- the family and say they are
6 dysfunctional, but whether or not they contain
7 information that would go to the heart of the ability
8 of any one of these family members to actually
9 appreciate the truth, be able to recall history, and go
10 to their innate credibility in their psychiatric and
11 psychological history.

12 Your Honor made a finding there was no such
13 evidence in the record, and the People ask your Honor
14 to abide by your ruling.

15 THE COURT: All right, my ruling stands. I
16 will not change it and allow Ms. Ramirez to be recalled
17 to the stand.

18 Additionally, the records have been returned,
19 under seal, to the establishment from which they came.
20 I will not have them made any part of the court record
21 at this time.

22 Anything else for the record?

23 MR. BERGER: I would ask you to subpoena them
24 back, get them back here and at least let them, in some
25 way, be made part of the court record, if this matter

Proceedings

1296

1 should have to go on appeal. I understand you returned
2 them, but it's just as easy to get them back, and I
3 wish there could be some way which the Court would make
4 it so it could be part of the record in this case so if
5 the Appellate Court wishes to review this, should it
6 get that far.

7 THE COURT: How about we cross that bridge if
8 we need to at the conclusion of this case. So I'm not
9 closing that entirely, but I'm not going to do it at
10 this time.

11 MR. BERGER: Fine.

12 THE COURT: Anything else for the record?

13 MR. PERRI: No, your Honor.

14 THE COURT: The record is closed.

15 (Whereupon, the trial was adjourned to May
16 21, 2015.)

17 * * *

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1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 43

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 742N/14

5 -against- :

6 DANIEL RAMOS, :

7 Defendant. : Jury Trial

8 -----X

9 May 21, 2015
262 Old Country Road
Mineola, New York

10

B E F O R E:

11

12 HONORABLE TERESA K. CORRIGAN,
Acting Supreme Court Justice

13

A P P E A R A N C E S:

14

(As Previously Noted)

15

16 * * * * *

17

18

19

20 THE CLERK: Case on trial continues,
21 Indictment Number 742N of 2014, People of the State of
22 New York v. Daniel Ramos.

23 Let the record reflect, all parties are
24 present. The jury is not present at this time.

25 Are the People ready?

Daniel Ramos - Defense - Direct

1298

1 MR. PERRI: Yes, your Honor.

2 THE CLERK: Defense?

3 MR. BERGER: Yes, your Honor.

4 THE COURT: Anything for the record before we
5 bring the jury back in?

6 MR. PERRI: No, your Honor.

7 MR. BERGER: Nothing.

8 (Whereupon, the jury entered the courtroom.)

9 THE CLERK: The defendant is on the stand.
10 Do both sides stipulate all sworn jurors are
11 present and properly seated?

12 MR. PERRI: Yes, your Honor.

13 MR. BERGER: Yes, your Honor.

14 THE CLERK: Mr. Ramos, you are reminded that
15 you are still under oath, okay?

16 THE DEFENDANT: Yes.

17 D A N I E L R A M O S, called on behalf of the Defendant,
18 having been previously sworn, took the witness stand
19 and testified as follows:

20 THE COURT: Good morning, everyone. I hope
21 you had a nice evening. We'll get started right away.

22 Mr. Berger, you may inquire.

23 DIRECT EXAMINATION

24 BY MR. BERGER: (Continuing)

25 Q. Mr. Ramos, when did you meet your wife?

D. Ramos - Defense - Direct

1299

1 A. In 1980.

2 Q. Have you been with her ever since?

3 A. Yes.

4 Q. And how many years were you working for different
5 bus companies where you were transporting children?

6 A. Twelve, almost thirteen because in 2013 I was
7 arrested.

8 Q. Let me draw your attention to October 16, 2013;
9 did you have occasion to talk with Crystal Ramirez?

10 A. I didn't understand the question.

11 Q. On October 16, 2013, which is the date of this
12 incident that you are charged with, do you understand that's
13 the date we're talking about, Mr. Ramos?

14 A. Yes. Yes, that was the date of the incident.

15 Q. Now, there came a time when you spoke with Crystal
16 Ramirez, correct?

17 A. Yes, I spoke to her. She called me at my job.

18 Q. Tell us what the conversation was.

19 MR. PERRI: Objection.

20 THE COURT: I'll allow it for some
21 background. He may answer.

22 A. She called me at work and asked me to stop by her
23 house, and I told her I was feeling tired and that maybe I
24 could go. And when I left work, I went straight home.

25 Q. And then what happened?

D. Ramos - Defense - Direct

1300

1 A. I was at home, and I got -- made myself
2 comfortable and started watching TV.

3 Q. Go on.

4 A. And she gave me -- and she called me about twice
5 and asking me so that we can -- could go have a good time.

6 Q. Go on.

7 A. I told her that I did not feel like going but she
8 insisted calling.

9 Q. What did she want you to do?

10 A. She wanted me to buy her first Long Island ice
11 tea, and a hero with turkey, tomato and Swiss cheese.

12 Q. Anything else?

13 A. She asked me to buy her a pack of Newport 100's.

14 Q. Did you do those things?

15 A. Yes.

16 Q. And what did you do after you purchased them?

17 A. Oh, went and bought them. She called me and asked
18 me if I already had the things, so I could go over there.

19 And when I left, I was nearby the house. I was almost -- I
20 was close to arriving at her home, and she called me again
21 asking me where was I.

22 Q. Go on.

23 A. And I told her I'm close to your house.

24 Q. What did you do?

25 A. When I got to her house, I gave her the things and

D. Ramos - Defense - Direct

1301

1 we sat at the porch, and she wanted to get some glasses and
2 she poured the drink. We started drinking. I don't drink,
3 but I was there to keep her company. She likes to smoke a
4 lot and then she started smoking right there.

5 Q. Go on.

6 A. And time went by and like three, 3:15, the
7 children arrived.

8 Q. Continue, please.

9 A. And when they got there, Sincere, the boy, he went
10 straight and started his homework, and the little girl was
11 in the yard, and she saw me and she wanted me like to go
12 ahead and play with her and the mother said, you know, she
13 is hiding from you.

14 Another thing, I said that she wanted me to go
15 ahead and play with her, but I did not pay attention to her.
16 And the mom, her mom told me that she was hiding so that I
17 could go ahead and get her and bring her, and then I told
18 her to come back in and go do her homework.

19 Q. Go on.

20 A. And when she was smoking out there, I told her to
21 close the door because I was concerned. I did not like for
22 the children to absorb the smoke.

23 Q. And what happened?

24 A. And then I told Crystal to go help the children
25 with the homework.

D. Ramos - Defense - Direct

1302

1 Q. What did she say?

2 A. And she told me why don't you go.

3 Q. And did you?

4 A. I asked the girl, because I asked Sincere, and
5 Sincere told me he did not need any help, so I helped the
6 little girl, the younger one.

7 Q. You helped her with her homework, Mya?

8 A. Yes, I helped her.

9 Q. And then what happened?

10 A. And when she finished with her homework and I
11 helped her, I went back outside. And I continue speaking
12 with Crystal, drinking the liquor, and a few minutes later a
13 male arrived and a friend of Crystal's, but he was not there
14 a long time. It was only a little bit. She only gave him a
15 cigarette and then he left.

16 Q. And then what happened?

17 A. And then I asked Crystal permission because I
18 needed -- I wanted to go to the bathroom.

19 Q. And did she give it to you?

20 A. Yes.

21 Q. And what happened then?

22 A. When I went to the bathroom, I saw the girl there.
23 I think she was going to change her clothes because she had
24 just came from school, and she did not have any clothes on;
25 not totally. She had a shirt on. She had on a shirt.

D. Ramos - Defense - Direct

1303

1 Q. Okay. So she was not clothed from the waist down;
2 is that what you are saying?

3 A. No.

4 Q. No, that's correct, or no, that she didn't have
5 any clothes?

6 A. No, she did not have her clothes on. She had her
7 clothes in her hand.

8 Q. Okay. And then what did you do?

9 A. Then she followed me, and I told her to stay
10 because I was going to use the bathroom.

11 Q. You walked towards the bathroom; is that correct?

12 A. I went in. I closed the door.

13 Q. Before you went in, did you say anything to Mya?

14 A. I told her to put on her clothes.

15 Q. Did she try to follow you into the bathroom?

16 A. Yes.

17 Q. And what did you tell her?

18 A. No, for her to wait for me outside.

19 Q. So you went into the bathroom, correct?

20 A. Yes.

21 Q. Mya did not go in?

22 A. No.

23 Q. You did what you had to do and then you left the
24 bathroom?

25 A. Yes.

D. Ramos - Defense - Direct

1304

1 Q. And what did you see when you opened the door and
2 left the bathroom?

3 A. She was still without clothes.

4 Q. And where were the clothes?

5 A. Her little hands, and I took it from her.

6 Q. What did you say to her?

7 A. That, to put on her clothes because she was naked
8 and that her mom was going to punish her.

9 Q. And what did you do?

10 A. We went to the kitchen. I took the clothes from
11 her and I told her come, and I sat her on the floor, and I
12 put on her panties, and a pajamas button, I think it was.

13 Q. Did you pull them all the way up?

14 MR. PERRI: Objection.

15 THE COURT: Reason.

16 MR. PERRI: It's leading, your Honor.

17 THE COURT: Try not to lead, Mr. Berger. Ask
18 your next question.

19 Q. Where did you put the panties and the pajamas?

20 A. I was putting it on her. I was dressing her up.

21 Q. What part of her body did you put the panties and
22 the pajamas?

23 A. She was sitting on the floor. I put on her
24 panties first.

25 Q. Go ahead.

D. Ramos - Defense - Direct

1305

1 A. And then I put on her pajamas, I believe it was.

2 Q. And then what happened?

3 A. Then I stood her up and I put on her -- to put on
4 her shorts because I didn't want to touch her anymore
5 because of her mom.

6 Q. So you stood her up. When you stood her up, where
7 were her panties and pajamas?

8 A. Like around the knees.

9 Q. And when you stood her up and her panties were
10 around her knees, what happened?

11 A. I told her to put on her pants before her mom --
12 her little pants before her mom came in.

13 Q. And what happened?

14 A. When she bent to bring up her little pants, her
15 mother walked in at that time.

16 Q. What did she say?

17 A. She said in English, what the fuck. What is going
18 on here?

19 Q. What did she say after that?

20 A. She asked the little girl if he was -- if I was
21 eating her coochie, and the little girl said, yes, because
22 she was afraid that Crystal would punish her.

23 MR. PERRI: Objection.

24 THE COURT: Sustained to the last part of the
25 answer. That is stricken. Wait for a question.

D. Ramos - Defense - Direct

1306

1 Q. After she asked Mya if you had eaten her coochie
2 and after she said, yes, what did you say to Crystal, if
3 anything?

4 A. I told her that I did not do anything.

5 Q. After that what happened?

6 A. They told me to leave the house immediately if I
7 did not want her to call the police.

8 Q. And did you leave?

9 A. Immediately I left because I didn't want any
10 troubles with her.

11 Q. Okay. Was Crystal angry when she said these
12 things when she walked into the kitchen?

13 A. Super angry, I would say.

14 Q. Daniel, did you at any time ever put your mouth or
15 tongue on Mya's vagina?

16 A. No, never.

17 Q. Did you ever put your penis inside her anus?

18 A. No, never.

19 Q. Now, you went outside, and did you remain there?

20 A. Yes, I went to my car.

21 Q. Did you have a conversation with anybody prior to
22 the time that the police came? Did you have a conversation
23 with anybody?

24 A. No. With the exception of Mya, who I saw at the
25 window.

D. Ramos - Defense - Direct

1307

1 Q. What conversation did you have?

2 MR. PERRI: Objection. It's hearsay, your
3 Honor.

4 MR. BERGER: What?

5 THE COURT: Come up.

6 (Whereupon, there was a sidebar discussion,
7 as follows:)

8 THE COURT: The objection is hearsay.

9 Agreed. I was trying to quickly go through my mind --

10 MR. BERGER: It's part of a transaction and
11 it should only come in that it was said, not that it is
12 true. If you hear the content of it, if you think it's
13 hearsay, after that then I agree you can sustain it.
14 When you hear what the conversation is you will see
15 it's not hearsay. It's not coming in for the truth of
16 it.

17 MR. PERRI: This is after he exited the
18 house. The door is locked. He is shouting into the
19 home. He is speaking into the home.

20 THE COURT: If it's coming in for the truth
21 of the matter, it's hearsay. I was trying to go
22 through my mind if there is a hearsay exception to this
23 potential answer that is about to come out. I'll hear
24 the answer. If you have a continued objection, you
25 will let me know, and if it needs to be stricken. I'll

D. Ramos - Defense - Direct

1308

1 take that application for now. I'll allow it to come
2 in.

3 MR. BERGER: It's not hearsay, because
4 hearsay has to come in for the truth. This is reciting
5 a conversation that is not hearsay, if it's reciting a
6 conversation.

7 THE COURT: I will give the jury an
8 instruction right now that the next answer is not
9 coming in for the truth of the matter. At the end of
10 the day, hearsay is hearsay, and it's just whether
11 there is an exception. Anything said outside of the
12 transaction, any conversation is hearsay.

13 MR. BERGER: No, it's only coming in for the
14 truthfulness of it, Judge. That's the important thing,
15 it has to be coming in for the truthfulness of the
16 content, not that there was a conversation. That
17 always comes in.

18 THE COURT: But then you could simply say,
19 did you have a conversation and you don't get the
20 content of the conversation out.

21 MR. BERGER: But you do. It's not coming in
22 for the truthfulness of it. The content of the
23 conversation has to be coming in for its truthfulness.
24 All we are doing is saying, this is coming in for the
25 fact that it was said, period.

D. Ramos - Defense - Direct

1309

1 MR. PERRI: If it's not coming in for the
2 truthful fact in the case, then what is the relevancy
3 of it?

4 MR. BERGER: It's very relevant.

5 THE COURT: It only becomes relevant if it's
6 for its truth, otherwise you can simply say, was there
7 a conversation.

8 MR. BERGER: Mya testified in this courtroom.

9 MR. PERRI: So it is a prior inconsistent
10 statement.

11 MR. BERGER: Yes, it will be inconsistent
12 with what she said.

13 MR. PERRI: Then there might be an exception.

14 THE COURT: I'll let him answer.

15 MR. PERRI: Then it's for the truth.

16 (Whereupon, the proceedings resumed.)

17 THE COURT: You may answer.

18 Q. What was the conversation you had with Mya?

19 A. I asked her if her mom was going to call the
20 police, if she called the police because she told me she was
21 going to call the police.

22 Q. What else did you say?

23 A. Mya answer me, you know, my mom, you know how she
24 is.

25 Q. Did you stay and remain there?

D. Ramos - Defense - Direct

1310

1 A. Yes, waiting for Crystal to come out so we could
2 fix this issue, and she never came out.

3 Q. And when you say, fix the issue, what did you mean
4 by that?

5 A. The bad thoughts that she was having.

6 Q. She, being who?

7 A. The reason why she told me she was going to call
8 the police.

9 Q. When you say, she, who are you referring to?

10 A. Crystal Ramirez.

11 Q. There came a time when the police arrived?

12 A. When I was talking to Mya and waiting for Crystal,
13 I saw the police and the ambulance that were coming.

14 Q. How much time elapsed, how much time went by from
15 the time you walked out of the house until you saw a police
16 car?

17 A. About five, ten minutes.

18 Q. Okay. Now, you heard Sincere testify in court; do
19 you remember?

20 A. Yes, of course.

21 Q. And you heard Sincere say that you said you didn't
22 do anything?

23 A. Exactly.

24 Q. But then you heard him say -- but then you said, I
25 did it. Did that happen?

D. Ramos - Defense - Direct

1311

1 A. He said it because somebody told him to say that
2 because he doesn't know anything.

3 MR. PERRI: Objection.

4 THE COURT: Sustained to the last part of the
5 answer. It is stricken. Mr. Berger, you can ask the
6 question again, but that answer is stricken.

7 Q. Mr. Ramos, listen to the question. Did you say to
8 anyone there at the house that you did this, that you did
9 it?

10 A. To no one.

11 Q. Now, drawing your attention to the time when the
12 police officer came to the house; do you recall that?

13 A. Yes.

14 Q. Did you hear Officer Boccio testify about certain
15 things he says that you said?

16 A. I don't remember specifically.

17 Q. Let me ask you this: Did you say to Officer
18 Boccio, arrest me, she says I raped her daughter?

19 A. No. That was not what I said.

20 Q. Did you say to Officer Boccio, I made a mistake, I
21 licked her once in the bedroom; did you say that?

22 THE INTERPRETER: Can I have that repeated?

23 THE COURT: Read it back.

24 (Whereupon, the record was read back.)

25 A. I never said that.

D. Ramos - Defense - Direct

1312

1 Q. Okay, now, there came a time when you were
2 arrested?

3 A. Yes.

4 Q. And you were taken to, you were transported to
5 another building?

6 A. Yes.

7 Q. And in that other building is where you met
8 Detectives Baran and Pacheco, correct?

9 A. First it was a detective that took my statement.
10 I think it is Baran.

11 Q. And, I show you People's 9 in evidence, referred
12 to as a rights card; do you see that, Mr. Ramos?

13 A. Yes.

14 Q. Is your signature on that card?

15 A. Yes.

16 Q. And did you write the word C on that card?

17 A. Yes.

18 Q. Why did you sign that card?

19 A. Because they told me to sign it.

20 Q. Did they ever tell you before they even questioned
21 you that you had the right to remain silent?

22 A. No.

23 Q. That anything you said could be used against you
24 in court, that you have a right to an attorney, and if you
25 couldn't afford an attorney, one would be provided to you?

D. Ramos - Defense - Direct

1313

1 Did they ever read that to you before you were questioned?

2 A. No.

3 Q. Did you know what you were signing when you signed
4 People's 9 in evidence?

5 A. I did not know what I was signing, but they did.

6 Q. But at that time when you signed it, you did not
7 know what you were signing?

8 A. No, they only told me to sign it.

9 Q. I show you what has been marked People's 10 in
10 evidence.

11 A. I see my signature there, and my Social Security
12 number.

13 Q. Did you sign that document?

14 A. Yes.

15 Q. Were there places where you put your initials on
16 that document?

17 A. They told me to put it.

18 Q. Why did you sign that document?

19 A. Because they told me to sign it.

20 MR. BERGER: Thank you. May I have that
21 document back.

22 Q. Mr. Ramos, at any time while you were in the room
23 with either Detective Baran, or Detective Pacheco, did you
24 ever say I told her I was going to tickle her, and I pulled
25 down her pants and underwear, and I tickled her pussy with

D. Ramos - Defense - Direct

1314

1 my mouth?

2 A. Never.

3 Q. Do you know what the word pussy means?

4 A. Yes. I know it, but I do not use those kinds of
5 words.

6 Q. You don't use the word pussy?

7 A. No.

8 Q. Did you tell either Detective Baran or Detective
9 Pacheco your address, that you live at 781 Coleridge Road in
10 Uniondale.

11 A. Yes, because they asked me.

12 Q. Did you tell either one of the detectives, my wife
13 Juana lives there with me with my son Carlos, age 31?

14 A. Yes.

15 Q. And my other son, David Ramos, who is
16 twenty-three?

17 A. Yes.

18 Q. Did you say to them, I work for NICE or NICE in
19 Nassau County as a bus driver?

20 A. Yes.

21 Q. And you told them your Social Security number?

22 A. Yes.

23 Q. You told us yesterday that you didn't read English
24 too well, correct?

25 A. During that time I did not read it that much, but

D. Ramos - Defense - Direct

1315

1 now I have taken good use of that time while I have been
2 detained.

3 Q. You mean for the last 19 months you have improved
4 your ability to read English?

5 A. Yes.

6 Q. But did you ever read this statement back on the
7 16th of October, 2013?

8 A. I tried to read it, but I did not understand it
9 too well.

10 Q. Okay. Did Detective Baran, or Detective Pacheco,
11 or any other police officer, ever say to you, that you had
12 said I told her I was going to tickle her, and I pulled down
13 her pants and underwear and I tickled her pussy with my
14 mouth?

15 MR. PERRI: Objection.

16 THE COURT: Overruled. If you understand the
17 question, you may answer.

18 A. Can you say that question again?

19 Q. Did Detective Pacheco or Detective Baran ever read
20 to you that you said I told her I was going to tickle her,
21 and I pulled down her pants and underwear and tickled her
22 pussy with my mouth?

23 A. No.

24 Q. Did you tell Detectives Baran or Pacheco,
25 Wednesday, October 16, 2013, I am normally off from work,

D. Ramos - Defense - Direct

1316

1 but I put my name on the list for extra work, and I got five
2 hours today?

3 A. Yes. I told him that.

4 Q. Did you tell them I work from about 6:30 a.m.
5 until about 11:30 a.m.?

6 A. Yes.

7 Q. Did you tell them when I was finishing work today
8 I got a call from my friend, Crystal Ramirez?

9 A. Yes.

10 Q. Did you tell her I know her husband Scooby?

11 A. Yes.

12 Q. Did you tell them Crystal told me to come to her
13 house today?

14 A. Yes.

15 Q. After work, and hanging out there and have a few
16 drinks with her?

17 A. Yes.

18 Q. Did you at the time tell them I forgot what
19 streets she lives on, but she lives in the back of the deli?

20 A. Yes.

21 Q. Did you tell them I bought a twenty dollar bottle
22 of Long Island Ice Tea because she asked me to bring some
23 liquor so we could drink?

24 A. Yes.

25 Q. Did you tell them I also bought her a pack of

D. Ramos - Defense - Direct

1317

1 Newport 100's?

2 A. Yes.

3 Q. Did you tell them that Crystal drinks every day
4 and smokes a lot too?

5 A. Yes.

6 Q. Did you tell them I encourage her to keep the door
7 closed so the smoke doesn't go into the house and hurt the
8 kids?

9 A. Yes, I told her that. Yes, I told her that.

10 Q. Did you tell them I had got to her house and went
11 to the porch and started drinking and she started smoking?

12 A. Yes.

13 Q. Did you tell them after a short time, a black guy
14 came by and joined us on the porch?

15 A. Yes.

16 Q. Did you tell them that he was there a little bit
17 and then he left?

18 A. Yes.

19 Q. Did you tell them I stayed with Crystal drinking
20 after he left?

21 A. Yes.

22 Q. Did you tell them I was still there when the kids
23 came home?

24 A. Yes.

25 Q. And did you tell them that and they went inside

D. Ramos - Defense - Direct

1318

1 the house to make their homework?

2 A. Yes.

3 Q. Did you tell them I helped them today to do their
4 homework?

5 A. Yes.

6 Q. Did you tell them I told Crystal to help them and
7 she told me to help them?

8 A. Yes.

9 Q. Did you tell them, so I went inside the house and
10 helped them? Did you tell them when they finished their
11 homework, I went back outside to drink with Crystal?

12 A. Yes.

13 Q. Did you tell them after awhile, I told Crystal I
14 needed to use the bathroom?

15 A. Yes.

16 Q. And did you tell them and she said go ahead and
17 use the bathroom?

18 A. Yes.

19 Q. And did you tell them, so I went inside to the
20 house, and the little girl was following me all around?

21 A. Yes.

22 Q. And did you tell them, so I went into the
23 bathroom?

24 A. Yes.

25 Q. Did you tell them that I told her to stay out of

D. Ramos - Defense - Direct

1319

1 the bathroom and I went in?

2 A. Yes.

3 Q. Did you tell them when they came out of the
4 bathroom she was still there waiting for me in the kitchen?

5 A. Yes.

6 Q. Did you tell them I told her I was going to tickle
7 her and pulled down her pants and underwear and tickled her
8 pussy with my mouth?

9 A. No.

10 Q. Did you tell them that I followed her to pull her
11 pants up and just then Crystal came into the kitchen?

12 A. Could you say that question again?

13 Q. Did you tell them, I then told her to pull her
14 pants up?

15 A. Yes.

16 Q. And did you tell them and just then Crystal came
17 into the kitchen?

18 A. Yes.

19 Q. And did you tell them you saw the little girl with
20 the pants down, and she said to me, what are you doing?

21 A. No, she didn't say what are you doing.

22 THE INTERPRETER: The interpreter needs
23 clarification.

24 A. She asked the little girl, if I was eating her
25 coochie.

D. Ramos - Defense - Direct

1320

1 Q. And did you say to them, I said I wasn't doing
2 nothing?

3 A. I told them, yes.

4 Q. Did you tell them that she then asked the little
5 girl what I was doing, and she said, I was licking her
6 pussy?

7 A. Could you say it again?

8 Q. Did you say to the police, she asked the little
9 girl what I was doing, and she said, I was licking her
10 pussy?

11 A. Yes. When her mother asked her, she said, yes.

12 Q. Right, okay. Did you say to them, I said to Mya,
13 I was playing with you, but she said, no, he was licking my
14 pussy. Did you say that?

15 THE INTERPRETER: Can I have that repeated?

16 THE COURT: You may.

17 (Whereupon, the record was read back.)

18 A. I didn't use those words. I didn't say those
19 words.

20 Q. Did you say to the police, the little girl was
21 scared of her mother?

22 A. A lot, yes.

23 Q. Mr. Ramos, is that something that you observed
24 over the time of your being with Crystal and the kids?

25 MR. PERRI: Objection.

D. Ramos - Defense - Direct

1321

1 THE COURT: Sustained.

2 Q. Did you observe the interaction between Mya and
3 her mother during the course of your relationship?

4 A. I do not understand that question.

5 Q. During the course of your relationship with
6 Crystal and Mya, were you able to observe the relationship
7 between Crystal and Mya?

8 A. Yes.

9 Q. And when you told the police the little girl was
10 scared of her mother, is that something you observed in
11 observing the relationship between the two?

12 A. Yes. Of course, the child looked like she was
13 very intimidated by her mother.

14 Q. Did you tell the police, Crystal then told me to
15 get out and I did?

16 A. Yes.

17 Q. Did you say to the police, I made a big mistake,
18 and I'm very sorry for what I did?

19 A. No.

20 Q. Did you say to the police, I am presently in the
21 special victims squad detective office, where I am giving
22 this statement to Detective Baran? Did you say that to
23 them?

24 A. No.

25 Q. Did you say to them, who has typed it for me, and

D. Ramos - Defense - Direct

1322

1 Detective Pacheco has read it to me in Spanish, and it is
2 correct and true; did you say that?

3 A. I don't remember.

4 Q. Did Detective Pacheco ever read to you in Spanish,
5 the following: I told her I was going to tickle her, and I
6 pulled down her pants and underwear, and I tickled her pussy
7 with my mouth?

8 A. No.

9 Q. There came a time when, I don't know, was it
10 Detective Baran or Detective Pacheco who asked you to write
11 a letter to Crystal and Mya?

12 A. Detective Baran said to write a letter, said to
13 Detective Pacheco to write a letter in Spanish saying that,
14 saying that the interpreter needs clarification.

15 THE COURT: Go right ahead.

16 A. Saying sorry.

17 Q. And did you write what is in evidence as People's
18 11; did you write that?

19 A. Yes.

20 Q. And why did you write that?

21 A. Because they told me to write it.

22 Q. They told you to write the letter. What did they
23 tell you to write, specifically?

24 A. To write an apology letter.

25 Q. And why did you write this?

D. Ramos - Defense - Direct

1323

1 A. Because they told me to write it.

2 Q. Okay. Let me show you People's 11.

3 A. Yes, that's my handwriting and that's my name.

4 Q. Did you say in that letter, I was sorry for
5 licking Mya's vagina?

6 A. That letter doesn't say anything in regards to
7 that.

8 Q. But you asked -- why did you say what you said in
9 that letter?

10 A. Because of the way that she was acting. She was
11 very angry with me, and I do not like to offend people and
12 that's why I wrote that letter.

13 Q. So you felt she was offended by your actions?

14 MR. PERRI: Objection, leading.

15 THE COURT: Sustained.

16 Q. You saw that she was angry, correct?

17 MR. PERRI: Objection, leading.

18 THE COURT: Put a timing on it.

19 Q. Back when you were in the kitchen, you saw that
20 Crystal was angry, correct?

21 A. Super, super angry, and I was also very scared.

22 Q. And what were you apologizing for when you wrote
23 People's 11?

24 A. The way she was acting.

25 Q. So you were apologizing for her actions?

D. Ramos - Defense - Direct

1324

1 A. Because of how she was feeling.

2 Q. Mr. Ramos, in all of the times that you were with
3 Mya, did you ever touch her in any sexual way?

4 A. Never.

5 Q. Did you ever put your mouth or your tongue on her
6 vagina?

7 A. Never. It never crossed my mind.

8 Q. Did you ever put your penis in her anus?

9 A. No.

10 Q. Did that ever cross your mind?

11 MR. PERRI: Objection.

12 THE COURT: Overruled.

13 A. Never.

14 Q. Has that ever crossed your mind with respect to
15 any child?

16 A. Never.

17 MR. BERGER: Thank you. Nothing further.

18 THE COURT: We have been working about an
19 hour, so before we allow the People to conduct their
20 cross-examination, if they choose to, let me give you a
21 short break to stretch your legs and use the facility.

22 Don't talk about the case with each other.

23 Don't let other people talk to you about the case.

24 Don't let anyone talk about the case in your presence.

25 Don't get on your phones and start to research

D. Ramos - Defense - Direct

1325

1 anything. Enjoy your short break. See you all in ten
2 minutes.

3 (Whereupon, the jury exited the courtroom.)

4 THE COURT: Yesterday, Mr. Berger, you made a
5 request of the Court to photocopy the records I had
6 looked at with regards to the child center, the
7 Psychiatric Counseling Center. I advised you we
8 returned the records. In fact, I was mistaken. We had
9 not yet returned the records. We have them. I'll make
10 a complete copy of them. They will be under seal, and
11 if it's required under the case that they become part
12 of the Court's file, I will do that. If it's not
13 required, depending on the jury's verdict, I will not,
14 but we have them, and an exact copy will be made.

15 (Whereupon, a short recess was taken.)

16 (Whereupon, the jury entered the courtroom.)

17 THE CLERK: Do both sides stipulate all sworn
18 jurors are present, People?

19 MR. PERRI: Yes, your Honor.

20 THE CLERK: Defense counsel?

21 MR. BERGER: Yes, your Honor.

22 THE CLERK: Mr. Ramos, you are reminded you
23 are still under oath.

24 THE DEFENDANT: Yes.

25 THE COURT: Welcome back.

1 People, you may cross-examine.

2 CROSS-EXAMINATION

3 BY MR. PERRI:

4 Q. Mr. Ramos, you began your testimony here
5 yesterday, correct?

6 A. Yes.

7 Q. And yesterday when you were asked on direct when
8 you and your wife were married, you couldn't remember
9 yesterday, correct?

10 A. Yes.

11 Q. And when you were asked yesterday whether or not
12 -- sorry, withdrawn.

13 When you were asked yesterday how long you lived
14 at your home, you didn't know the answer to that question
15 either, correct?

16 A. Yes.

17 Q. And then when you were asked today when you
18 married to your wife you had the answer right away, correct?

19 MR. BERGER: Objection. That's not what was
20 asked.

21 THE COURT: Sustained. With regards to that
22 particular objection.

23 Q. When you were asked today when you married your
24 wife, you were able to respond?

25 MR. BERGER: Objection. That's not what was

D. Ramos - Defense - Cross

1327

1 asked.

2 THE COURT: Sustained.

3 Q. What happened in 1980 between you and your wife?

4 A. I met her.

5 Q. And you had that answer right away today, correct?

6 A. Yes.

7 Q. And yesterday when you were questioned about how
8 much time you spent bussing and working with children, you
9 didn't have an exact answer, correct?

10 A. Yes.

11 Q. And then today when you were asked the same
12 question, you say said twelve or thirteen years, correct?

13 A. Correct.

14 Q. Did you work on your testimony last night, sir?

15 MR. BERGER: Objection to the form of the
16 question.

17 THE COURT: You can answer if you understand
18 the question.

19 A. Could you say that question again?

20 Q. Did you work on your testimony last night, sir?

21 A. Mentally, yes. I was reviewing it, because I was
22 not expecting those questions.

23 Q. Were you expecting the questions you were asked
24 today?

25 A. Yes.

1 Q. Did you go over those questions?

2 A. Mentally, yes.

3 Q. And you didn't discuss those questions with anyone
4 else, just mentally?

5 A. No.

6 Q. But you were able then to somehow to expect those
7 questions today?

8 A. Those and a lot more.

9 Q. So it was part of your work experience in the
10 United States you worked for the MTA, correct?

11 A. Yes, for the MTA in Nassau and then NICE came in
12 and replaced MTA.

13 Q. While you were working for the MTA, there were
14 forms, correct?

15 A. What do you mean by forms?

16 Q. Papers. Did you have to log each day of your
17 work?

18 A. Yes.

19 Q. And did you have -- when you accepted your job,
20 did you get a description of your position?

21 A. Yes.

22 Q. And when you were working for the MTA and for the
23 NICE bus, you had to interact with customers, correct?

24 A. Correct.

25 Q. You had to answer their questions?

D. Ramos - Defense - Cross

1329

1 A. If I knew them, yes. If I did not, no.

2 Q. All of that, the forms, papers, job offers, that
3 was all in English, correct?

4 A. Yes.

5 Q. You said you have known Crystal Ramirez for over
6 ten years, correct?

7 A. Yes.

8 Q. Just to be clear, your relationship to Crystal
9 Ramirez and to her children, is that you are the father of
10 her -- the father of her children's friend?

11 THE INTERPRETER: Could I have the question
12 read back?

13 THE COURT: How about you rephrase the
14 question.

15 Q. Your relationship, your connection to Crystal
16 Ramirez, is that you are the father of a friend of the
17 father of her children?

18 A. I do not understand that question.

19 Q. How did you meet Crystal Ramirez?

20 A. Through the father of the children.

21 Q. Was the father of the children a friend of your
22 son?

23 A. Yes.

24 Q. You are not dating Crystal Ramirez, correct?

25 A. No.

D. Ramos - Defense - Cross

1330

1 Q. You are not romantically involved with her at all,
2 correct?

3 A. No.

4 Q. You are just very kind to her and her children,
5 correct?

6 A. Exactly.

7 Q. And you described how for this former girlfriend
8 of your son's friend, you would drive her anywhere pretty
9 much she wanted to go, correct?

10 A. I do not understand that question. Could you make
11 it clear, please?

12 Q. You would drive Crystal Ramirez anywhere she
13 wanted to go, pretty much, correct?

14 MR. BERGER: Objection, Judge. The form of
15 the question, pretty much.

16 THE COURT: Sustained as to form.

17 Q. You drove Crystal Ramirez many places, correct?

18 A. Yes.

19 Q. And you drove her children many places, correct?

20 A. Yes.

21 Q. And they didn't pay you anything for that,
22 correct?

23 A. No.

24 Q. And you bought them meals, correct?

25 A. Sometimes.

D. Ramos - Defense - Cross

1331

1 Q. And you paid for those meals sometimes, correct?

2 A. Correct.

3 Q. You're paying for these meals of someone you
4 weren't dating, correct?

5 A. Correct.

6 Q. And you were babysitting for Crystal's children,
7 correct?

8 A. Um, sometimes when she will ask me.

9 Q. And were you paid for babysitting, correct?

10 A. No.

11 Q. And at this time when you were babysitting the
12 children, driving Crystal many places, sometimes with her
13 family, you had a full-time job, correct?

14 A. Um, sometimes yes, sometimes no.

15 Q. When were the times that you weren't employed in
16 the last three years?

17 MR. BERGER: The last three years, are we
18 talking the last --

19 THE COURT: That objection is sustained as to
20 form. Please clarify the timeframe. Wait for a new
21 question.

22 Q. In the three years before October 16th of 2013,
23 when were you unemployed?

24 A. I've always been working.

25 Q. You have had a full-time job during the same time

1 you were babysitting and transporting the Ramirez family?

2 A. Yes.

3 Q. And at that time, when you were transporting them
4 and babysitting for the children, you had your own home,
5 correct?

6 A. Yes.

7 Q. And you had your own family, correct?

8 A. Yes.

9 Q. And you have your own children?

10 A. Correct.

11 Q. And you had a wife?

12 A. Correct.

13 Q. During the same time you were hanging out with
14 Crystal Ramirez on multiple occasions?

15 A. Not as a couple, but as friends.

16 Q. And as friends, you would go out to dinner,
17 correct?

18 A. When she would tell me, yes.

19 Q. Whenever Crystal Ramirez told you, you would pick
20 her up and drop her off, correct?

21 A. Correct.

22 Q. You even drove her into Suffolk County at least
23 one time, correct?

24 A. More than once.

25 Q. And you were never paid for any of that, correct?

D. Ramos - Defense - Cross

1333

1 A. No.

2 Q. And you have been to Crystal's house several
3 times; is that correct?

4 A. When she called me, yes.

5 Q. So whenever Crystal Ramirez called you, you
6 dropped everything in your life, and you did whatever she
7 needed, correct?

8 MR. BERGER: Objection to form of the
9 question.

10 THE COURT: You may answer it.

11 A. I did not understand. Can you say that question
12 again?

13 Q. Whenever Crystal called and made a request, even
14 though sometimes you didn't want to, you did what she said?

15 A. Sometimes, yes, because she would say fag, come do
16 this.

17 Q. And so you stayed friends with Crystal even though
18 she was saying those things to you?

19 A. Well, she was not saying in an offensive way, at
20 least I did not take it that way.

21 Q. When she called you a fag, you didn't take that as
22 offensive?

23 A. No.

24 Q. So regarding October 16, 2013, you testified your
25 concern about how much Crystal drinks, correct?

D. Ramos - Defense - Cross

1334

1 A. Yes.

2 Q. And you also said you are concerned about how much
3 Crystal smokes, correct?

4 A. Yes.

5 Q. And on October 16th, you purchased the alcohol
6 that was being drank at Crystal's home, correct?

7 A. Correct.

8 Q. And you purchased the cigarettes for her, correct?

9 A. Correct.

10 Q. And she didn't pay you for any of that, correct?

11 A. Correct.

12 Q. And so all of the way up to October 16th of 2013,
13 you never did anything negative to Crystal Ramirez?

14 A. Yes.

15 Q. And you had no huge argument with Crystal Ramirez,
16 correct?

17 A. Never.

18 Q. And you got along with her children, correct?

19 A. With her, with the children, and with the father.

20 Q. And you liked being around the children, correct?

21 A. All of them.

22 Q. Specifically, the children, you liked being around
23 the children, correct?

24 A. Not just them, the friends, the people that I knew
25 in the family.

1 Q. When you babysat the children, you were alone with
2 them, correct?

3 A. With them, yes.

4 Q. And that was more than once, correct?

5 A. Once or twice, but with her permission, with the
6 permission of the mother.

7 Q. But the mother wasn't there, Crystal wasn't there,
8 correct?

9 A. Sometimes, no. Sometimes she was nearby.

10 Q. And sometimes you babysat at night, you testified
11 to that?

12 A. Yes.

13 Q. And those times at night would have been just you,
14 Sincere, and Mya, correct?

15 A. Yes.

16 Q. Now, in your statement to the police, and the
17 written statement that you looked at on the stand --

18 MR. BERGER: Objection to the phrase, his
19 statement to the police, that is disputed, Judge.

20 THE COURT: Sustained. Identify it by
21 evidence.

22 Q. In the document you signed with the police, I
23 believe as People's 10, and then also in your testimony, you
24 said you helped the children with their homework, correct,
25 on October 16, 2013?

D. Ramos - Defense - Cross

1336

1 MR. BERGER: Judge, I object to the form of
2 the question. If he wants to ask what happened on the
3 16th, fine.

4 THE COURT: Objection overruled. It's
5 cross-examination.

6 You may answer.

7 A. Yes.

8 Q. And so you helped the children with their homework
9 many times, correct?

10 A. No, only that time.

11 Q. And that time, the homework that you are helping
12 them with, what language was it in?

13 A. In English, because they do not speak Spanish.

14 Q. That's correct. The children don't speak Spanish
15 and Crystal doesn't speak Spanish, correct?

16 A. Of course not.

17 Q. So you were able to read their homework, correct?

18 A. A child's homework is very easy.

19 Q. That wasn't the question, sir. Were you able to
20 read the homework?

21 A. Yes. After, yes.

22 Q. What was Mya's homework that you helped her out
23 with that day?

24 A. Pictures and questions, like pictures and
25 questions with like father/mother table.

1 Q. And you said on direct you testified that you had
2 to ask her permission to use the bathroom that day?

3 A. Yes, that's it.

4 Q. And when you are in Crystal's house, do you always
5 ask permission to use the bathroom?

6 A. Of course, yes.

7 Q. It was your testimony that when Mya -- when you
8 say Mya wasn't wearing her underwear or her pants, you had
9 her sit on the floor in order for you to be able to put her
10 underwear and her pants on; is that correct?

11 A. Correct.

12 Q. So to make it easier to put her pants on, you had
13 her sit down on the floor?

14 A. What was the question?

15 Q. To make it easier, you had her sit down on the
16 floor to put her own pants on?

17 MR. BERGER: Objection to the form of the
18 question.

19 THE COURT: Overruled.

20 You may answer.

21 A. For me it was easier to put her clothes on there
22 because it is easier for me.

23 Q. Do you sit down on the ground when you put your
24 pants on?

25 A. When I'm going to play soccer, football, yes.

1 Q. Mr. Ramos, you were sitting here yesterday,
2 correct?

3 A. Correct.

4 Q. And you heard the testimony from your expert,
5 correct?

6 A. Which expert?

7 Q. The expert that you called; that your case called
8 with respect to DNA.

9 A. The doctor that was sitting here?

10 Q. Yes.

11 A. Yes, I heard him, but he his very professional,
12 and I'm not that professional to understand those words.

13 Q. Did you hear him talking about touching underwear?

14 A. Yes, that I understood.

15 Q. You understood the part about touching underwear
16 and transferring DNA, correct?

17 A. Yes.

18 Q. And you heard that before you testified here
19 today, correct?

20 A. Could you repeat the question?

21 Q. And you heard that testimony before you testified
22 here today, correct?

23 A. Correct.

24 Q. Because in the document that you signed, that is
25 People's 10, you never said anything about touching Mya's

D. Ramos - Defense - Cross

1339

1 clothing, correct?

2 A. Before, yes, I said.

3 Q. When did you say that?

4 A. When Detective Baran interviewed me, but he didn't
5 write it.

6 Q. Let's go back to the interview, actually, before
7 the interview. So after Crystal walked in and you left the
8 house, within five minutes you testified Officer Boccio,
9 police officer, or a police officer arrived at the scene; is
10 that correct?

11 A. I do not understand your question.

12 Q. After you left the house, did the police arrive
13 within five to ten minutes?

14 A. Correct.

15 Q. And you spoke with one of those police officers,
16 correct?

17 A. When I saw that he came, yes.

18 Q. And that police officer was the one that put
19 handcuffs on you, correct?

20 A. Correct.

21 Q. And have you ever met that police officer before?

22 A. No.

23 Q. And he didn't know you, correct?

24 MR. BERGER: Objection.

25 THE COURT: Sustained as to form.

D. Ramos - Defense - Cross

1340

1 Q. You never met him before that day, correct?

2 A. No.

3 Q. Once you came to the special victims squad, you
4 were placed in a small room, correct?

5 A. Correct.

6 Q. And at some point, while you were there that
7 night, you were given food, correct?

8 A. They gave me a slice of pizza with some water or
9 soda. I'm not too sure.

10 Q. And you were allowed to use the restroom, correct?

11 A. I don't remember.

12 Q. And there did come a time where you spoke with
13 Detective Baran, correct?

14 A. Correct.

15 MR. PERRI: I would like him to be shown
16 People's 9.

17 Q. Mr. Ramos, you were shown that on October 16,
18 2013, after you were arrested, correct?

19 A. They told me to sign it.

20 Q. That's not the question, sir. Were you shown that
21 document?

22 A. Yes.

23 Q. And you can see it now?

24 A. Yes.

25 Q. And you recognize your signature three times,

1 correct?

2 A. Twice. Twice. No, no, three times.

3 Q. And you recognize where you have written si, S-I
4 twice, correct?

5 A. Yes.

6 Q. What is the title of that document, what's the
7 first two lines in bold?

8 A. It says, notification of your rights before being
9 questioned.

10 Q. And that's exactly how that card appeared when
11 were you given it, correct?

12 A. Yes, but I did not read it.

13 Q. But you looked at it, correct?

14 A. Yes, I saw it.

15 Q. So you looked at it and there are words on that
16 page, correct?

17 A. Yes.

18 Q. But you didn't read the words that you saw on that
19 page that are in Spanish?

20 A. No.

21 Q. And you understood that you were under arrest at
22 that time, correct?

23 A. Yes, from the moment the agent arrested me I knew
24 I was under arrest.

25 Q. And you understood this was very serious, correct?

D. Ramos - Defense - Cross

1342

1 MR. BERGER: Objection.

2 THE COURT: Overruled.

3 You may answer.

4 A. Could you repeat?

5 Q. Did you understand it was serious, your situation?

6 A. No.

7 Q. So it's your testimony that you were given that
8 card, you had been in custody for hours at that point, that
9 Crystal had accused you of having oral sex with her
10 daughter, called the police, but it wasn't serious?

11 MR. BERGER: Such a compound question. The
12 question is improper.

13 THE COURT: You can answer if you understand
14 the question.

15 A. I did not know all that.

16 Q. You didn't know that Crystal believed that you had
17 sexual contact with her daughter; is that what you are
18 saying?

19 MR. BERGER: Judge, I object. He's asking
20 him what Crystal believed.

21 THE COURT: Sustained as to form.

22 Q. On direct Mr. Berger asked you what Crystal said
23 and you testified that Crystal said, in your presence, did
24 he eat your coochie to Mya. Mya said, yes, according to
25 you, and then Crystal became extremely angry and said, get

D. Ramos - Defense - Cross

1343

1 out of the house, I'm going to call the police?

2 MR. BERGER: Judge, it's a compound question.

3 It mixes a lot of facts up. I ask him to ask it one at
4 a time instead of lumping them altogether.

5 THE COURT: Overruled.

6 You may answer the question.

7 Q. Was that your testimony?

8 A. Could you say the question again?

9 Q. Did you not testify that you say that Crystal,
10 when she walked into the kitchen and found you with Mya,
11 asked Mya, did he eat your coochie?

12 A. Crystal asked Mya if I ate her coochie and Mya
13 answered her, yes, because she was fearful of --

14 MR. PERRI: I ask the last part be stricken.

15 THE COURT: The last part after the because
16 is stricken. The rest of the answer stands.

17 Q. After that, it was your testimony that Crystal
18 told you to get out of the apartment and she was going to
19 call the police, correct?

20 A. Yes. She yelled at me telling me to leave the
21 house immediately. I'm sorry, I forgot what I was saying.

22 Q. Did she also tell you she was going to call the
23 police?

24 A. Yes. She yelled at me, screamed at me and told me
25 to leave the house. If not, she was going to call the

1 police, but she called them anyway.

2 Q. In fact, you asked Mya, according to your
3 testimony, whether her mother called the police, correct?

4 A. Yep. When I saw her by the window and I came
5 close to the window, and I asked her before the police came,
6 I asked her.

7 Q. So Mya was doing that when she was six-years old,
8 correct?

9 A. Correct.

10 Q. So she came to the window to talk to you
11 afterwards?

12 A. I saw her sitting at the window looking at me.

13 Q. The first question you asked her, did your mom
14 call the police?

15 A. No, the question was, why did your mother call the
16 police.

17 Q. And then the six-year old girl's response to you,
18 according to you, was you know how my mom is?

19 A. Correct.

20 Q. And knowing all that, and being in custody for
21 hours with the police, it's your testimony that you didn't
22 think it was serious?

23 MR. BERGER: Judge, objection to the form of
24 the question.

25 THE COURT: Overruled.

1 A. When I asked the little girl, the police had not
2 arrived yet.

3 MR. PERRI: I'm asking the witness be
4 directed to answer the question.

5 THE COURT: All right. Why don't you ask the
6 question again.

7 Q. Knowing everything that we have just gone over,
8 Mr. Ramos, everything that you testified to, are you still
9 saying that when you were at the special victims squad in
10 the arrest room, that you didn't know this was serious?

11 A. No, because I did not know. I did not know
12 absolutely anything.

13 Q. And so when the police placed the document in
14 front of you, you just signed it?

15 A. Because they told me, because they told me so.
16 That was the first thing.

17 Q. Detective Pacheco didn't read you the top two
18 paragraphs in Spanish?

19 MR. BERGER: Specifically, just direct his
20 attention to the paragraph he is referring to.

21 MR. PERRI: The top two paragraphs.

22 THE COURT: Is the document before the
23 witness?

24 MR. BERGER: The rights card.

25 THE COURT: Given all of the colloquy, ask

D. Ramos - Defense - Cross

1346

1 the question again.

2 Q. With respect to the rights card, the document that
3 you signed three times, are you saying Detective Pacheco did
4 not read the top two paragraphs to you in Spanish?

5 A. No.

6 Q. Detective Pacheco was there, correct?

7 A. The other detective called him.

8 Q. And so Detective Pacheco was present?

9 A. Yes.

10 Q. Detective Baran called in Detective Pacheco and
11 all he did was direct you to sign that card?

12 A. Correct.

13 Q. Could you please read the final paragraph on that
14 card, the third paragraph?

15 THE COURT: I'm going to ask you to read it
16 slowly.

17 Q. I'll point it out for you. I'm asking you to read
18 this final paragraph.

19 A. Everything?

20 Q. Yes.

21 THE INTERPRETER: The interpreter asks him to
22 read it slowly.

23 THE COURT: Yes, read it slowly.

24 A. I'm going to read it up to the dot, the period. I
25 have been informed by the detective, the police agent, that

1 I have the right to remain silent, and that anything that I
2 say, it could be used against me in court. They have
3 informed me that I have the right to speak to an attorney
4 before answering any questions or to have an attorney
5 present at any time. They also informed me that if I cannot
6 pay an attorney, that they can assign me one, and I still
7 have the right to remain silent until I have had the time to
8 speak with an attorney.

9 Q. And then your signature appears directly below
10 that paragraph, correct?

11 A. Correct.

12 MR. PERRI: I ask that be taken from the
13 witness, your Honor.

14 THE COURT: You may.

15 Q. Mr. Ramos, after you signed that card, you spoke
16 with Detective Baran, correct?

17 A. Talking about what?

18 Q. You talked about the incident with Mya, correct?

19 A. The supposed incident that happened?

20 Q. Yes.

21 A. Yes. He asked me some questions.

22 Q. That was after you signed the card, correct?

23 A. Yes.

24 Q. And as you were -- and he was speaking what
25 language to you?

D. Ramos - Defense - Cross

1348

1 A. The one that does not speak Spanish, was speaking
2 to me in English.

3 Q. And you were able to under understand his
4 questions, correct?

5 A. The ones that I could, yes, some questions.

6 Q. And you answered those questions, correct?

7 A. Some questions.

8 Q. And at some point while you were talking to
9 Detective Baran, he started typing, correct?

10 A. He was writing by hand.

11 Q. Did there come a time where he started typing?

12 A. He took the information on a piece of paper and
13 went to another office.

14 Q. There was a computer in that room, correct?

15 A. I don't remember.

16 MR. PERRI: I ask the witness be shown
17 People's 10.

18 Q. Mr. Ramos, do you recognize People's 10, correct?

19 A. Yes.

20 Q. That's the paper that you signed on both pages,
21 correct?

22 A. Correct.

23 Q. And that's the page where you also made
24 corrections on that page, correct?

25 A. Supposedly some corrections, yes.

1 Q. And your initials appear on it multiple times
2 also, correct?

3 A. Correct.

4 Q. And at the very top of the page it says statement
5 of Daniel Ramos, correct?

6 A. Correct.

7 Q. And so, when you saw this document on October
8 16th, it appeared the same as it appears now, correct?

9 A. I would have to read it to see if it's the same
10 one.

11 Q. Take your time. Look at it.

12 A. I'm now able to read more English than before, but
13 I prefer to read it in Spanish if it's in Spanish.

14 Q. If you read English now, go ahead.

15 A. I'm going to take my time, and I'm going to go
16 slowly. This way it is the same way I read in Spanish.

17 THE COURT: Are you asking he read it out
18 loud?

19 MR. PERRI: Your Honor, the only thing the
20 People are asking him to do is look at the document and
21 see if this appears to be the same when he last saw it.

22 THE COURT: Do you understand what is being
23 asked of you? Just a yes or no.

24 THE WITNESS: No.

25 THE COURT: Ask it again.

D. Ramos - Defense - Cross

1350

1 Q. Has that document been altered in any way since
2 you signed it?

3 A. Like I said before, I would have to read it
4 again.

5 THE COURT: With the Court's permission, sit
6 there quietly, sir, and read it to yourself.

7 MR. BERGER: Judge, I object. How could he
8 know if it's altered if he couldn't read English back
9 then very well.

10 THE COURT: Counselor, you will be able to do
11 it if you need to on redirect. The witness said he
12 needs to look it over. I'm giving him an opportunity
13 to look it over.

14 A. There are certain words that I do not understand,
15 that I did not say. There are some words there that I did
16 not say.

17 Q. I understand that's your position, sir, but aside
18 from those words that you say weren't there when you signed
19 the document --

20 MR. BERGER: Objection, Judge.

21 THE COURT: Sustained.

22 Q. Aside from the words that you say you were unaware
23 of when you signed the document, are there any other
24 alterations to that document?

25 MR. BERGER: I don't understand the question

D. Ramos - Defense - Cross

1351

1 and how it is relevant.

2 THE COURT: Overruled.

3 You may answer.

4 A. The last correction here where it says, linina,
5 girl, when it says -- that's the last correction there
6 because when he said, I went back into the house, he did not
7 put little girl and that's the correction I made.

8 Q. So you made that correction, correct?

9 A. That was the last one, yes.

10 Q. And you pointed out in English that sentence was
11 missing the word girl, correct?

12 A. Yes. At that time I told him that the word girl,
13 little girl is not there.

14 Q. So, you were able to read that sentence, correct?

15 A. Of course. It's a very common word.

16 Q. And that is approximately two lines above where it
17 says, I told her I was going to tickle her, and I pulled
18 down her pants and underwear, and I tickled her pussy with
19 my tongue?

20 A. I don't see those words there.

21 Q. But you made your initials next to that
22 correction, correct?

23 MR. BERGER: Objection.

24 Which correction?

25 MR. PERRI: The only correction we are

D. Ramos - Defense - Cross

1352

1 discussing, your Honor.

2 THE COURT: Objection overruled.

3 A. Yes.

4 THE COURT: I hate to do this to you, but we
5 need to break. Ladies and gentlemen of the jury, it's
6 that time for you to enjoy your lunch.

7 Please remember to keep an open mind
8 throughout the trial. Do not discuss the case amongst
9 yourselves or with anyone else during the trial. Do
10 not permit anyone to discuss the case in your presence.
11 Do not talk to lawyers, witnesses, or the defendant
12 about anything during the trial.

13 Over the lunch hour, do not visit the place
14 where the crime was allegedly committed, or any other
15 place involved in the case.

16 If there is any news media coverage, ignore
17 it. Don't get on your phones and try to research it.

18 Enjoy your lunch. See you at 2:00.

19 (Whereupon, the jury exited the courtroom.)

20 THE COURT: Anything for the record,

21 Mr. Berger?

22 MR. BERGER: No, your Honor.

23 THE COURT: People?

24 MR. PERRI: No, your Honor.

25 THE COURT: See you at 2:00.

D. Ramos - Defense - Cross

1353

1 MR. PERRI: The People ask that the Court
2 admonish defense counsel not to discuss the testimony
3 in this case with his client. He's in the middle of
4 cross-examination and it's entirely inappropriate.

5 MR. BERGER: I did not discuss the testimony.
6 I understand the application, and I will honor it.

7 THE COURT: Thank you very much.

8 (Whereupon, a luncheon recess was taken.)

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THE CLERK: Case on trial continued,
Indictment Number 742N of 2014. People of the State of
New York vs. Daniel Ramos.

Let the record reflect all parties are
present. The jury is not present at this time.

Are the People ready?

MR. PERRI: Yes, your Honor.

THE CLERK: Defense counsel ready?

MR. BERGER: Yes, your Honor.

(Whereupon, the jury entered the courtroom.)

THE CLERK: Do both sides stipulate all sworn
jurors are present, People?

MR. PERRI: Yes, your Honor.

MR. BERGER: Yes.

THE CLERK: Mr. Ramos, you are reminded you
are still under oath.

THE DEFENDANT: Yes.

THE COURT: Welcome back. I hope you enjoyed
your lunch.

People, you may continue.

MR. PERRI: Thank you, your Honor. I ask the
defendant be given back People's 10.

D. Ramos - Defense - Cross

1355

1 CROSS-EXAMINATION

2 BY MR. PERRI: (Continuing)

3 Q. Mr. Ramos, we left off talking about you placing
4 your initials on that document; do you remember that?

5 A. Yes.

6 Q. And you put your initials next to the correction
7 where you instructed the detective to add the word girl,
8 correct?

9 MR. BERGER: Objection.

10 THE COURT: Overruled.

11 A. I did not understand the question.

12 Q. Did you place your initials next to the word girl?

13 A. Yes, because they told me to write it. They told
14 me to put it.

15 Q. You pointed out the word girl was missing from
16 that sentence?

17 MR. BERGER: Objection, time and place.

18 THE COURT: Overruled. If he understands.

19 A. Could you say it again?

20 Q. Mr. Ramos, you noticed the word girl was missing
21 from that sentence, correct?

22 MR. BERGER: Objection. When? Time and
23 place.

24 MR. PERRI: May we approach?

25 THE COURT: You may.

kmm

D. Ramos - Defense - Cross

1356

1 Objection overruled.

2 (Whereupon, there was a sidebar discussion,
3 as follows:)

4 MR. PERRI: The entire line of questioning
5 started -- we left off talking about putting your
6 initials on the document, the time and place, is that
7 the time and place of when this document was created?

8 THE COURT: You go back and just say every
9 question however you want to say it how it is related
10 to when you were in the precinct.

11 MR. BERGER: My objection is ambiguous and
12 deceptive. If you want to ask, did he tell the
13 detective to put the word girl in there at the time,
14 fine, you could ask him that question. Don't talk
15 about it as if it's ambiguous, which as to whether or
16 not he is looking at it today, or had it way back when
17 on October 16th. I'm asking the question be fair, not
18 ambiguous, so that it's kind of a trick question and
19 unfair to the defendant.

20 THE COURT: All right. It is
21 cross-examination. I'm not going to tell either of you
22 how to formulate your questions. I'll continue to take
23 objections if they arise.

24 This objection is overruled.

25 You can read it back.

D. Ramos - Defense - Cross

1357

1 MR. PERRI: I ask it be read back.

2 (Whereupon, the proceedings resumed.)

3 THE COURT: Read back the question.

4 (Whereupon, the record was read back.)

5 Q. And at the top of the page, the first correction
6 where you initialed next to the correction, that's your
7 Social Security number, correct?

8 A. It is corrected and my initials are there because
9 someone told me to write my initials there.

10 Q. And the correct Social Security number is written
11 down next to your initials, correct?

12 A. Yes. It's written by hand, yes. But the one
13 written, the one that is typed, is incorrect.

14 Q. And the reason the typed one was changed, the
15 handwritten one, is because you told Detective Baran your
16 Social Security number was typed incorrectly?

17 A. That is correct. Exactly.

18 Q. So Mr. Ramos, you were given an opportunity to
19 review this document with Detective Baran, correct?

20 A. Yes.

21 Q. And that was before you signed the document,
22 correct?

23 A. I don't remember.

24 Q. At some point after you reviewed the document with
25 Detective Baran, Detective Pacheco returned, correct?

D. Ramos - Defense - Cross

1358

1 A. Can you repeat the question?

2 MR. PERRI: I ask it be read back, your
3 Honor.

4 THE COURT: You may.

5 (Whereupon, the record was read back.)

6 Q. And Detective Pacheco spoke Spanish, correct?

7 A. Yes.

8 Q. And you were able to communicate with Detective
9 Pacheco in Spanish?

10 A. Detective Baran will tell him what he had to say
11 to me.

12 Q. And were you able to understand Detective Pacheco?

13 A. A little, yes.

14 Q. He was speaking Spanish, correct?

15 A. He speaks Spanish, but not that clearly.

16 Q. And there came a time where he read you the -- or
17 he appeared to read you the document?

18 A. Um, I don't remember.

19 Q. Did he speak in Spanish to you?

20 A. What he had to tell me in regards to what
21 Detective Baran will tell him, yes.

22 Q. Was he looking at People's 10 while he was
23 speaking to you in Spanish?

24 A. Which one, this one?

25 Q. Yes.

D. Ramos - Defense - Cross

1359

1 A. Could you say that question again?

2 Q. Was he looking at that document while he was
3 speaking to you in Spanish?

4 A. No, he would only tell me what I had to do, but
5 when Detective Baran will tell him so.

6 Q. Did he make those markings of RP next to your
7 initials?

8 A. Which ones?

9 Q. The letters RP?

10 A. Which ones. I do not see them.

11 Q. The two initials next to your initials, the
12 letters R and P?

13 A. That's not RP.

14 MR. PERRI: I ask the document be taken from
15 the witness.

16 Q. So it's your testimony that next to the letters
17 DR, near the word girl, the letters RP do not appear?

18 A. Show me. I don't see it.

19 MR. PERRI: I ask it be taken from the
20 witness.

21 I ask the defendant be shown People's 11.

22 Q. Mr. Ramirez, you testified you wrote that letter,
23 correct?

24 A. Yes.

25 Q. And you wrote that as a letter to Crystal,

1 correct?

2 A. Correct.

3 Q. It's addressed to Crystal and Mya, correct?

4 A. For the family, yes.

5 Q. But it says on the letter, addressed to Crystal
6 and Mya, correct?

7 A. Yes, that's what I wrote, but it's for the family.

8 Q. And that's your signature at the bottom, correct?

9 A. That's my name, not my signature.

10 Q. But your signature did appear on the rights card
11 and on the document that was written by Detective Baran,
12 correct?

13 A. Yes, those signatures are there.

14 Q. And those are your signatures?

15 A. Yes, those are my signatures.

16 Q. So your testimony is you wrote this letter to
17 Crystal to apologize for Crystal being upset, correct?

18 A. Exactly.

19 Q. But it never says that anywhere in that letter,
20 correct?

21 A. Which letter?

22 Q. The letter in front of you.

23 A. It did not say what.

24 Q. However, did it -- does it say you are asking for
25 a thousand pardon, correct?

1 A. A thousand pardons, yes, of course.

2 Q. It says that you are very sorry for what happened?

3 A. Yes, that's what it says.

4 Q. It says you never intended to do any harm to
5 anyone, let alone the kids?

6 A. That is correct.

7 Q. You asked multiple times for Crystal to drop the
8 charges?

9 A. Exactly. Perfectly.

10 Q. You never said you are sorry, that you were upset,
11 correct?

12 A. That is not what is written in the letter, but
13 that's what the letter is intended for.

14 Q. While you were in police custody, you were never
15 injured, correct?

16 A. Never, because I went voluntarily.

17 Q. When you say, you went voluntarily, you went in
18 handcuffs, correct?

19 A. Yes.

20 Q. And no one ever threatened you, correct?

21 A. Not that I know of.

22 Q. And no one put a gun to your head?

23 A. No, never.

24 Q. But you signed all of these documents without
25 reading them, according to you?

D. Ramos - Defense - Cross

1362

1 A. Um, yes.

2 Q. Before October 16th of 2013, you had never met
3 Detective Baran, correct?

4 A. Never.

5 Q. And before October 16th of 2013, you never met
6 Detective Pacheco?

7 A. Never.

8 Q. And before that date you never met Officer Boccio?

9 A. Never.

10 Q. Before October 16th of 2013, you were on very good
11 terms with Crystal Ramirez, correct?

12 A. What do you mean in good terms with Crystal?

13 Q. You didn't have any major problems with Crystal?

14 A. Never.

15 Q. And you got along with her children?

16 A. With her, with the children, and with the father
17 of the children.

18 Q. Sincere liked you?

19 A. Of course.

20 Q. Mya liked you?

21 A. Of course.

22 Q. And Crystal liked you?

23 THE INTERPRETER: The interpreter needs
24 clarification. Can you repeat the question?

25 Q. And you didn't have any problems with Crystal

D. Ramos - Defense - Redirect

1363

1 either?

2 A. No.

3 Q. Then after October 16th everything changed?

4 A. Yes.

5 MR. PERRI: Nothing further.

6 THE COURT: Redirect.

7 REDIRECT EXAMINATION

8 BY MR. BERGER:

9 Q. Mr. Ramos, we met approximately nineteen months
10 ago?

11 A. Yes.

12 Q. I asked you questions, you answered that?

13 MR. PERRI: Objection.

14 THE COURT: Overruled.

15 Q. Did you tell me the conversation you had handled
16 her underwear in attempting to put them on?

17 MR. PERRI: Objection.

18 THE COURT: Sustained.

19 Approach, please.

20 (Whereupon, there was a sidebar discussion,
21 as follows:)

22 THE COURT: I want to make sure the reason
23 for sustaining is what you're thinking, and I need to
24 understand your reason of the question before you make
25 yourself a witness to this case.

D. Ramos - Defense - Redirect

1364

1 MR. PERRI: Hearsay.

2 THE COURT: I'll hear you.

3 MR. BERGER: If you recall

4 cross-examination was, you heard the doctor testify

5 yesterday about handling underwear, so he made the

6 questioning was about, oh, you just came up with this

7 answer today with respect to handling underwear in

8 order to deal with the DNA that was offered yesterday,

9 and I'm making an offer this was -- this was said long

10 before that Dr. Reich's testimony yesterday. This is a

11 classic example of recent fabrication, and therefore, I

12 have a right.

13 THE COURT: Okay.

14 MR. PERRI: He is making himself a witness

15 now.

16 MR. BERGER: I'm asking him to tell me if he

17 said it before.

18 THE COURT: I'll let it go for now. I'll

19 allow the question to be asked. I'll entertain

20 whatever arguments you make after the fact. It's

21 clearly coming in for the truth of the matter.

22 MR. PERRI: When you say, coming in, that's

23 for the credibility.

24 THE COURT: Yes, with regards to recent

25 fabrication. That's fine. If it goes to far afield,

D. Ramos - Defense - Redirect

1365

1 I'll hear whatever you want to say. There is no
2 problem right now.

3 (Whereupon, the proceedings resumed.)

4 THE COURT: Re-ask the question.

5 Q. You heard Dr. Reich testify yesterday about DNA
6 coming from the hands?

7 A. Yes, I heard him.

8 Q. And then you heard Mr. Perri ask you today if you
9 had heard Dr. Reich's testimony?

10 A. Yes.

11 Q. So I'm asking you, prior to Dr. Reich's testimony,
12 when I would meet you at the jail and we spoke, did you tell
13 me prior to Dr. Reich's testimony that you had helped Mya
14 put her underwear on her feet?

15 A. Yes.

16 Q. Now, you told me before that you did not read
17 People's 10 in evidence; do you remember saying you did not
18 read this on October 16, 2013?

19 A. Yes.

20 Q. So, when the word girl was written, did you write
21 girl, or did somebody else write girl?

22 A. They told me to write it.

23 Q. So you didn't -- did you write it because you
24 noticed it was missing?

25 MR. PERRI: Objection.

1 Q. Or did you write it -- or did you write it because
2 they told you to write it?

3 THE COURT: Objection overruled.

4 A. They told me to write it.

5 MR. BERGER: Thank you.

6 Q. Did Detective Baran -- you testified in response
7 to Mr. Perri before that you didn't know how serious the
8 charges were?

9 A. Nobody told me about the charges. I didn't know
10 anything about the charges. I didn't read anything about
11 the charges either.

12 Q. So you are saying neither Detective Baran or
13 Detective Pacheco told you about the charges, correct?

14 A. Not one of them.

15 Q. Did they tell you how many -- what the sentence
16 would be for this charge?

17 MR. PERRI: Objection.

18 THE COURT: I'll take a yes or a no.

19 A. Repeat that question for me again.

20 Q. Did either detective tell you what the sentence
21 would be if you were convicted of this charge?

22 A. No.

23 Q. Now, that you know what the rights card says, this
24 card, you read it before in Spanish; do you remember?

25 A. Here, yes.

1 Q. Now, prior to October 16, 2013, had you ever been
2 arrested before?

3 MR. PERRI: Objection.

4 THE COURT: Sustained.

5 Q. Had you ever seen that card, the contents of it
6 before that day?

7 A. Never.

8 Q. Mr. Perri asked you to read from the bottom part
9 of the rights card, People's 9 in evidence, in the
10 courtroom; do you recall?

11 A. Which one?

12 Q. Mr. Perri asked you to read in Spanish a paragraph
13 from this; do you recall?

14 A. Yes.

15 Q. Did you read it at all on October 16, 2013?

16 A. Not that I can remember.

17 Q. Did you say before to Mr. Perri, that your
18 initials were placed on People's 10, correct?

19 A. Say the question again.

20 Q. Your initials were placed on People's 10 in some
21 places, correct?

22 A. In some places, yes, correct.

23 Q. And why were they placed there?

24 A. Because they told me to put it there.

25 Q. Mr. Perri asked you before if you had signed the

1 document without reading them back on October 16, 2013; do
2 you recall?

3 A. Repeat that. How is the question? Repeat the
4 question.

5 Q. Mr. Perri asked you before if you signed the
6 document without reading them on October 16, 2013?

7 A. You want me to remember if I signed it without
8 reading it? Yes.

9 Q. I'm asking you back on October 16, 2013, did you
10 tell me that you signed this without reading it, on October
11 16th?

12 A. Yes.

13 Q. But another document is People's 11, this one,
14 right?

15 A. Yes.

16 Q. This one you wrote, correct?

17 A. Because they told me to write it.

18 Q. But you wrote this paper?

19 A. Yes.

20 MR. BERGER: Thank you. Nothing further.

21 THE COURT: Recross.

22 MR. PERRI: May we approach?

23 THE COURT: You may.

24 (Whereupon, there was a sidebar discussion,
25 as follows:)

Proceedings

1369

1 MR. PERRI: As defense counsel and the
2 defendant waived the privilege, I ask for any documents
3 of noting the defendant's statement made back 19 months
4 ago.

5 THE COURT: All right, I'll deny that
6 application at this time.

7 MR. PERRI: Yes, your Honor.

8 THE COURT: Anything else?

9 MR. PERRI: No redirect.

10 THE COURT: All right.

11 (Whereupon, the proceedings resumed.)

12 THE COURT: Mr. Perri, any recross on that
13 limited redirect?

14 MR. PERRI: No, your Honor.

15 THE COURT: This is a good point for you to
16 take your break this afternoon. I know we have only
17 been working a few minutes. There are a couple of
18 things I need to take care of. Take a five-minute
19 break.

20 Don't talk about the case. Don't let anyone
21 talk to you about it. Don't get on your phones.

22 (Whereupon, the jury exited the courtroom.)

23 THE COURT: Let's have the defendant return
24 to his seat, please.

25 Do you have an application?

Proceedings

1370

1 MR. BERGER: I do, Judge.

2 Before I rest, I'm making another application
3 for you to reconsider not calling Crystal Ramirez.
4 I've presented this in a memorandum form. I have a
5 copy for the district attorney. Please present this to
6 the Court. Read it, please, and just consider what I
7 have written as an application to recall Crystal
8 Ramirez for cross-examination.

9 THE COURT: People, when you are ready, do
10 you want to be heard?

11 MR. PERRI: This is the same application
12 defense has made multiple times throughout this trial.
13 Your Honor has already ruled on this multiple times
14 throughout this trial. This memorandum or what is
15 labeled a memorandum by defense for consideration has
16 no citation to any other caselaw that counts as to
17 anything the Court has cited, or the People have cited
18 in support of denying defense counsel's application,
19 and the People reiterate again their opposition.

20 THE COURT: I'm going to mark this as a Court
21 Exhibit so it will be part of the file. I do want to
22 make clear that they -- that this memo refers to the
23 Court's reason for denying. For denying, it's too
24 remote in time is one of the reasons, but not the sole
25 reason. We had numerous conversations with regards to

1 why I denied this application in the past, and I will
2 continue to deny the application.

3 Although, again, this will be marked Court
4 Exhibit Number VII.

5 Anything else for the record, Mr. Berger,
6 before I ask you if you are going to rest?

7 MR. BERGER: Nothing for the record. We will
8 rest.

9 THE COURT: Before we have the jury out, why
10 don't we handle whether there is a rebuttal witness now
11 so we don't have to send them out again to take that
12 application.

13 Will you have a rebuttal?

14 MR. PERRI: We ask to call one rebuttal
15 witness, Joshua Hanson. Joshua Hanson is the director
16 of the safe center. We asked him to be called to
17 testify as a rebuttal to the defendant's character
18 witness, as they made his character for kindness and
19 gentleness towards children, and the issue in this case
20 and defense counsel is presently likely to argue the
21 fact that multiple witnesses testified to the defendant
22 being kind and gentle to children, is incapable with
23 the crimes alleged in this case, the experts, the
24 sexual abuse of children, the clinically sexual
25 predators, as characteristics of sexual predators would

1 be called to testify to limited areas of the character
2 and nature of a sexual predator, specifically,
3 grooming, which is the appearance of being kind and
4 gentle and inviting towards children and how that
5 characteristic is not incapable with being a sexual
6 predator.

7 MR. BERGER: This is totally inappropriate.
8 You know, it's come to my experience, that when the
9 children make an immediate outcry, the People present
10 witnesses that suggest that is what a person who is
11 abused does. When they don't make an immediate outcry,
12 they bring in an expert to say when they get abused,
13 they don't want to. Heads, I win, tails you lose, and
14 that is totally -- it's just rigging the game in this
15 particular case to bring in a witness to say, that if
16 you abuse a child, you can't be a gentleman and kind,
17 that's the issue here.

18 The issue is whether or not he did this.
19 It's not like -- I mean, it's just bizarre the People
20 would consider in bringing in a witness to say that
21 when you abuse children, you could be kind and
22 gentleman to children. It's, again, one of these
23 things, heads I win, tails you lose. And this is not
24 proper rebuttal in any case, Judge. I suggest to the
25 Court this would be beyond appropriate here and totally

Proceedings

1373

1 unfair to the defendant.

2 MR. PERRI: Your Honor, in this very
3 jurisdiction before the Honorable Tammy Robbins in the
4 case People v. Tores, this exact form of testimony was
5 permitted by the Court when the defense put forth
6 character witnesses that testified to the defendant's
7 gentle nature and his kindness towards children, almost
8 word for word in the same manner in that case the Court
9 allowed it there. It is allowed here, that the
10 question of character traits, meaning it is not, in
11 fact, counter intuitive and instructive to the jury to
12 hear this expert testimony.

13 MR. BERGER: The only rebuttal testimony that
14 is proper in this case is to bring in witnesses to
15 testify about his negative reputation with respect to
16 kindness and gentleness to children. That's the only
17 rebuttal testimony that should be allowed here.
18 Period. If they had witnesses to say he hasn't been
19 kind and gentle, fine. That's the only proper rebuttal
20 testimony, not some general statement about you could
21 be kind and gentle to children and abuse them because
22 if you are also kind and gentle to children, you may
23 not abuse them. That doesn't tell the jury anything.
24 It's really improper rebuttal.

25 THE COURT: It's the Court's intention, based

1 on my understanding of rebuttal evidence, and the
2 caselaw I've previously reviewed, to allow this
3 particular rebuttal witness. I do believe this is
4 relevant. The People will be allowed to call this
5 witness. Is this witness ready today?

6 MR. PERRI: Yes, your Honor.

7 THE COURT: Anything for the record before I
8 give you a five-minute break?

9 MR. PERRI: No.

10 MR. BERGER: No.

11 (Whereupon, a short recess was taken.)

12 THE CLERK: Case on trial continued, People
13 of the State of New York vs. Daniel Ramos.

14 All parties are present. The jurors are not
15 present at this time.

16 People ready?

17 MR. PERRI: Yes, your Honor.

18 THE CLERK: Defense counsel ready?

19 MR. BERGER: Yes, your Honor.

20 (Whereupon, the jury entered the courtroom.)

21 THE CLERK: Do both sides stipulate that all
22 sworn jurors are present?

23 MR. PERRI: Yes, your Honor.

24 MR. BERGER: Yes, your Honor.

25 THE COURT: Any other witness?

Hanson - People - Rebuttal-Direct 1375

1 MR. BERGER: Defense rests.

2 THE COURT: Thank you.

3 People, do you have a rebuttal case?

4 MR. PERRI: Yes, your Honor.

5 THE COURT: Call your first witness.

6 MR. PERRI: Joshua Hanson, your Honor.

7 J O S H U A H A N S O N, called on behalf of the People,
8 having been duly sworn, took the witness stand and
9 testified as follows:

10 HE CLERK: In a loud clear voice, please
11 state your name, spell your last name and give your
12 county of residence.

13 THE WITNESS: My name is Joshua Hanson,
14 J-O-S-H-U-A, H-A-N-S-O-N. My county of residence is
15 Kings County, New York.

16 THE COURT: Good afternoon, Mr. Hanson. My
17 name is Teresa Corrigan. I'm the judge in this matter.
18 A couple of rules for you, sir. Please speak clearly,
19 loudly, clearly. Use the microphone if you need to.
20 Wait for an entire question to be asked before you give
21 an answer. If you hear the word objection, I need you
22 to stop speaking. Give me a chance to rule. If you
23 don't understand the question, just let everybody know
24 that. Do you understand?

25 THE WITNESS: Understood.

1 DIRECT EXAMINATION

2 BY MR. PERRI:

3 Q. Good afternoon, Mr. Hanson.

4 A. Good afternoon.

5 Q. Are you currently employed?

6 A. Yes.

7 Q. Where are you currently employed?

8 A. Director of the Nassau County Child Advocacy
9 Center at the safe center.

10 Q. Could you please explain what that position
11 entails?

12 A. My job is to facilitate multidisciplinary team
13 response. The multidisciplinary team is made up of the
14 Nassau County Police Special Victims Squad, Nassau County
15 Child Protective Services, sex abuse in severe physical
16 abuse units, the district attorney's office, the County
17 Attorney's Office Representatives and Nassau County Medical
18 Center and the safe center.

19 Q. What was your last position before
20 becoming a director to CAC?

21 A. I was a forensic interviewer at the Brooklyn Child
22 Advocacy Center.

23 Q. Could you describe your duties at the Brooklyn
24 Advocacy Center?

25 A. My job was to conduct forensic interviews for the

Hanson - People - Rebuttal-Direct 1377

1 Brooklyn Special Victims Squad, and the Brooklyn -- well,
2 the administration for children services sex abuse unit
3 pursuant to allegations of child sex abuse or severe
4 physical abuse.

5 Q. Before coming to Brooklyn, where were you working?

6 A. I was a clinician outside of Boston, Massachusetts
7 with South Bay Mental Health.

8 Q. What do you do at South Bay Mental Health?

9 A. I was a trauma clinician. I work with children
10 with reported history of trauma.

11 Q. Could you please go through your educational
12 background?

13 A. I have a master's degree in mental health
14 counseling from Leslie University and bachelor's degree in
15 business management from Bentley University.

16 Q. Have you undergone any specialized training during
17 your career?

18 A. Yes.

19 Q. Could you please go through what specialized
20 licensed training you have had?

21 A. I attended at this point more than a dozen
22 training on forensic interviewing, including the National
23 Child Advocacy Center Forensic Interviewing Training and
24 Advanced Forensic Interviewing Training. I attended the New
25 York State Forensic Interviewing Best Practices Training,

Hanson - People - Rebuttal-Direct 1378

1 and a number of additional trainings, conferences and
2 symposium.

3 Q. How many years have you been working with child
4 sexual abuse?

5 A. For about eleven years now.

6 Q. And do you have any specialized training in
7 specifically child sexual abuse?

8 A. Yes. As part of the master's degree there was
9 course work focused on child sexual abuse, and in addition,
10 since I graduated work with children over the years, I
11 sought additional training. It's always a component of
12 forensic interview trainings to include child sex abuse
13 dynamics, perpetrator dynamics.

14 Q. Have you, in fact, taken those courses in child
15 sexual abuse dynamics and sexual perpetrator dynamics?

16 A. Yes.

17 Q. How many child sexual abuse cases and
18 investigation have you handled during your career?

19 A. At this point it would be more than 2000.

20 Q. And have you partnered with any other outside
21 government groups other than Brooklyn and Nassau County?

22 A. Yes. Both in Brooklyn and in Nassau County I was
23 contacted to conduct the forensic interviews for Homeland
24 Security, NICE, the FBI, and the postal inspector regarding
25 child sex abuse concerns.

1 Q. And if you had to estimate how many children you
2 interviewed as part of these investigation; could you please
3 do that?

4 A. I would estimate at this point it's more than
5 fifteen hundred interviews I conducted.

6 Q. Have you ever taught any courses or provided
7 trainings regarding child sexual abuse?

8 A. I provide a training to the team as part of the
9 course of new members joining the team, or free training and
10 then retraining, as necessary. So, whether it is a special
11 topic for forensic interviewing; things like interviewing a
12 child who might have a developmental disability, dealing
13 with children who have difficulty engaging in forensic
14 processes, things like that. I provide training to the team
15 and to other agencies.

16 Q. Have you ever testified in court as an expert
17 witness?

18 A. Yes, I have.

19 Q. And have you testified as an expert in child
20 sexual abuse and sexual perpetration?

21 A. Yes.

22 Q. And where have you testified as an expert?

23 A. I testified in Nassau County Criminal Court, in
24 Brooklyn and Queens Family Court.

25 MR. PERRI: I ask Mr. Hanson be deemed an

Hanson - People - Rebuttal-Direct 1380

1 expert in the field of child sexual abuse and sexual
2 perpetration.

3 THE COURT: Were you ever denied expert
4 status in those cases which you testified?

5 THE WITNESS: I was not.

6 THE COURT: What is the title that you are
7 looking for, counselor, a child abuse --

8 MR. PERRI: Child sexual abuse and sexual
9 perpetration.

10 THE COURT: Would you like to be heard?

11 MR. BERGER: Yes.

12 How many times have you testified in Court,
13 sir?

14 THE WITNESS: At this point about a dozen.

15 MR. BERGER: Always for the prosecution?

16 THE WITNESS: Yes.

17 MR. BERGER: I would challenge the expertise.

18 THE COURT: All right, the Court will declare
19 you an expert in the category of -- say it one more
20 time for the record.

21 MR. PERRI: Child sexual abuse and sexual
22 perpetration.

23 THE COURT: In the area of child sexual abuse
24 and sexual perpetration.

25 DIRECT EXAMINATION

Hanson - People - Rebuttal-Direct 1381

1 BY MR. PERRI: (Continuing)

2 Q. Mr. Hanson, could you explain what a pedophile is?

3 A. So, a pedophile is a term used both colloquially
4 and clinically. Usually when people use it colloquially,
5 they mean someone who is a sex offender against children.
6 Clinically, the term means someone who is either primarily
7 or solely sexually attracted to minors, generally under the
8 preputial minors or children under the age of eleven.

9 Q. What is the difference of the clinical definition
10 of pedophile and the term sexual perpetrator?

11 A. So, pedophilia is rarer than people tend to think.
12 Someone doesn't necessarily need to be a pedophile to offend
13 against children. The majority of individuals who offend
14 are actually -- have a sexual attraction to both adults and
15 to minors.

16 THE COURT: If you could turn your seat a
17 little bit so your voice goes towards the wall, that
18 would be appreciated.

19 Q. Just on that last question, Mr. Hanson, does the
20 sexual perpetrator have to be solely attracted to children?

21 A. No.

22 Q. Could you explain that again?

23 A. So, pedophilia is rarer than most people tend to
24 assume. The reality is that most individuals who offend
25 against children are attracted to both adults and to minors.

Hanson - People - Rebuttal-Direct 1382

1 Q. Now, do sexual perpetrators always act on their
2 impulses with every child they come into contact with?

3 A. No, generally, there is a process of selection.
4 In the field we would refer to as grooming, but predators
5 themselves refer to it as seduction.

6 Q. Could you please explain this process of grooming
7 or seduction?

8 MR. BERGER: Could we come up for a minute,
9 please?

10 THE COURT: You may.

11 (Whereupon, there was a sidebar discussion
12 with the Court and counsel, as follows:)

13 MR. BERGER: The offer made by Mr. Perri was
14 to show that if somebody is kind and gentle to children
15 doesn't mean they couldn't abuse a child.

16 THE COURT: Understood.

17 MR. BERGER: That's where we should be going
18 here. All these other things are extraneous.

19 MR. PERRI: I have three more questions.
20 Grooming, connected in appearance, and gentle and kind
21 to children.

22 THE COURT: I will give you a little way to
23 develop. You won't be allowed to go much longer.

24 MR. PERRI: I Understand.

25 (Whereupon, the proceedings resumed.)

Hanson - People - Rebuttal-Direct 1383

1 Q. Mr. Hanson, same question, again, could you
2 explain the process what you just referred to as grooming or
3 seduction?

4 A. Generally, there is a process of assessment in
5 which a perpetrator assesses a child for vulnerability. The
6 process of grooming generally, as thought of to be in a
7 staged process. The first process is ingratiating one self
8 with both the child in the family, so demonstrating they're
9 someone that the child would like or someone that is safe.

10 The next process is, to some extent, to isolate
11 the child, get time alone with the child, and generally, at
12 that point the perpetrator sexualizes the relationship.

13 Q. Would it be inconsistent with being a perpetrator
14 to appear to be kind and gentle with children?

15 A. No. In fact, that would be a strategy that is
16 often applied. Perpetrators themselves talk about how they
17 employ prosocial behaviors, things like spending times with
18 kids, giving them gifts, demonstrating that they are someone
19 who is trustworthy. It allows them access to the child.

20 Q. How do perpetrators appear in society? Do they
21 stand out?

22 A. So, the idea -- we like the idea that we can pick
23 perpetrators out of a crowd, but the reality is they have a
24 significant incentive to blend with the crowd, to look a
25 whole lot to look like everybody else and even to be seen as

1 people who would be someone that we would want our child to
2 be around.

3 MR. PERRI: Nothing further, your Honor.

4 THE COURT: Thank you. Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. BERGER:

7 Q. Mr. Hanson, have you ever met Daniel Ramos?

8 A. I don't believe I have, no.

9 Q. Have you ever met Mya Ramirez?

10 A. I don't believe I have, no.

11 Q. So let me ask you something: If a teacher is good
12 to children, does that mean she could be a pedophile also?

13 A. Not necessarily, no.

14 Q. And anybody else, parents who are good to their
15 children, does that mean they're necessarily a pedophile?

16 A. No.

17 Q. So, there are plenty of people in society who are
18 kind and gentle to children, aren't they?

19 A. Yes.

20 Q. And as you said, pedophilia is very rare, isn't
21 it?

22 A. It is.

23 Q. So, in your world, is everybody who kind and
24 gentle to children, a pedophile or risk at being a
25 pedophile?

Hanson - People - Rebuttal-Redirect 1385

1 A. Not at all.

2 Q. It's extremely rare, isn't it?

3 A. Pedophilia is extremely rare.

4 Q. And people who are kind and gentle to children are
5 just that, kind and gentle to children, correct?

6 A. Some individuals are, yes.

7 Q. Wouldn't you say most?

8 A. I would say most people who spend time with
9 children and who are kind to children are not pedophiles,
10 yes.

11 MR. BERGER: Nothing further.

12 THE COURT: Any redirect?

13 MR. PERRI: Very limited, your Honor.

14 Redirect.

15 REDIRECT EXAMINATION

16 BY MR. PERRI:

17 Q. Mr. Hanson, Mr. Berger asked you about pedophilia
18 being very rare. You also discussed that pedophilia was
19 different from being a sexual perpetrator, correct?

20 A. Yes.

21 Q. And in comparison, more in common to a sexual
22 perpetrator than a pedophile?

23 A. Yes.

24 MR. PERRI: Thank you, your Honor.

25 THE COURT: Anything on that point?

1 RECROSS-EXAMINATION

2 BY MR. BERGER:

3 Q. So, all of the teachers who are kind to children
4 and anybody else who are kind to children, they might be
5 sexual perpetrators as well, correct?

6 MR. PERRI: Objection.

7 THE COURT: Overruled. You can answer.

8 A. I wouldn't define them as predators, but certainly
9 I wouldn't screen them out if an allegation was made. I
10 wouldn't screen them out or assign any weight to the fact
11 that they were kind to children.

12 Q. But you wouldn't assume just because they are kind
13 and gentle to children, that they are potentially offenders,
14 sexual offenders?

15 MR. PERRI: Objection.

16 THE COURT: Sustained.

17 Q. You said you wouldn't screen them out?

18 A. Yes.

19 Q. But the people who are kind and gentle to
20 children, you wouldn't consider them suspect, would you?

21 MR. PERRI: Objection.

22 THE COURT: Sustained as to form.

23 Q. Just because as you put it, a sexual perpetrator
24 is more common than a pedophile, doesn't mean all of the
25 people in our society who are kind and gentle to children

Hanson - People - Rebuttal-Redirect 1387

1 would even remotely fit into that category?

2 A. Would fit into which category?

3 Q. Of people who are kind and gentle to children,
4 wouldn't fit into the category of a sexual perpetrator?

5 A. No.

6 MR. BERGER: Thank you. Nothing further.

7 THE COURT: Anything further?

8 MR. PERRI: No, your Honor.

9 THE COURT: Thank you. You may step down.

10 There's two steps.

11 Do you have anymore witnesses?

12 MR. PERRI: No, your Honor.

13 THE COURT: Do you rest on your entire case?

14 MR. PERRI: Yes, your Honor.

15 THE COURT: All right.

16 Off the record.

17 (Whereupon, there was a discussion held off
18 the record.)

19 THE COURT: Ladies and gentlemen, we're at
20 the point where you have finished hearing all of the
21 evidence in this case. We are approaching the four day
22 holiday weekend that we talked about during jury
23 selection. I'm going to give you a four-day holiday
24 weekend, as I said I would. I ask you all be back here
25 bright and early on Tuesday morning at 10:00 a.m., at

1 which point you will hear summations from the attorney
2 and then you will get the law from the Court and then
3 you will be asked to start your deliberations.

4 It's very important between now and then you
5 follow these admonitions that you know by heart, and I
6 know we do chuckle about them when I read them. It's
7 extremely important at this point, as it has been
8 throughout this entire case, that you follow the
9 admonitions over the next few days.

10 Keep an open mind throughout this case. Do
11 not discuss the case amongst yourselves or with anyone
12 else. Do not permit anyone to discuss the case in your
13 presence. Do not talk to the lawyers, witnesses, or
14 the defendant about anything during this break.

15 Do not visit or view the place where the
16 charged crime was allegedly committed or any other
17 place involved in this case, and if there is any news
18 coverage of the case, do not read, view or listen to
19 any accounts or discussions of the case reported by the
20 news media.

21 Do not attempt to research any fact, issue or
22 law related to this case whether by discussion with
23 others, by research in the library, or Internet, or any
24 other means or source.

25 Have a great holiday weekend. Stay safe.

Proceedings

1389

1 For those of you whom served our country. We will see
2 you all on Tuesday.

3 (Whereupon, the jury exited the courtroom.)

4 THE COURT: Anything for the record before we
5 break?

6 MR. PERRI: No, your Honor.

7 THE COURT: Mr. Berger, anything for the
8 record?

9 MR. BERGER: No, your Honor.

10 THE COURT: See you on Tuesday morning.

11 (Whereupon, the trial was adjourned to May
12 26, 2015.)

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COPY

1390

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NASSAU : CRIMINAL TERM PART 43

3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
5 : No. 742N/14
6 -against- :
7 DANIEL RAMOS, : VOL III
8 :
9 Defendant. : Jury Trial
10 -----X

8 May 26, 2015
9 262 Old Country Road
Mineola, New York

10 B E F O R E:

11 HONORABLE TERESA K. CORRIGAN,
12 Acting Supreme Court Justice

13 A P P E A R A N C E S:

14 (As Previously Noted)

15
16 * * * * *

17

18

19 THE CLERK: Case on trial continued,
20 742N of 2014, People of the State of New York vs.
21 Daniel Ramos.

22 Let the record reflect all parties are
23 present. The jury is not present at this time.

24 Are the People ready to proceed?

25 MR. PERRI: Yes, your Honor.

Proceedings

1391

1 THE CLERK: Defense counsel, ready?

2 MR. BERGER: Yes, your Honor.

3 THE CLERK: Let the record reflect Carmen
4 Knight is the Spanish interpreter.

5 THE COURT: I understand there is an
6 application for the record.

7 MR. BERGER: I ask you mark this Court
8 Exhibit VIII. I think the last one was VII. I don't
9 know if there is another exhibit. Could you make that
10 part of the record?

11 THE COURT: It will not be VIII. It will end
12 up being X, Court Exhibit Number X.

13 Do you want to be heard on this, Mr. Berger?

14 MR. BERGER: I've given a copy of this
15 application to the prosecutor. I don't know there's
16 anything further to add at this point.

17 THE COURT: Do you want to --

18 MR. PERRI: The People oppose its entirety.
19 It's the same application made several times with the
20 additional request that the People not be allowed to
21 make the logical arguments that Crystal Ramirez didn't
22 have a motive to lie. There is no citation of caselaw.
23 The People oppose.

24 THE COURT: I read it over. The application
25 is denied. It's now marked as Court Exhibit X.

1 Additionally, so everyone knows, Court
2 Exhibit VIII is the verdict sheet, which you were both
3 shown this morning, which you both placed your initials
4 on, and Court Exhibit IX, is going to be the verdict
5 sheet that actually goes back to the jury, minus
6 everyone's initials.

7 Anything else for the record?

8 MR. BERGER: Judge, by your decision, are you
9 addressing the fact that the new part of this motion
10 was not to allow the prosecutor to argue? It seems in
11 bad faith that this was suddenly out of the blue when
12 this Crystal Ramirez makes this claim, or he'll make an
13 argument that this came out of left field since there
14 was no reason for her to have even suspected anything
15 like this when we know the history here is contrary to
16 that.

17 All I'm saying, you made a ruling which you
18 denied my application to recall her, but certainly, I
19 think the Court should preclude the prosecutor from
20 making arguments which he can't be making in good
21 faith.

22 THE COURT: That application is denied.

23 Are we ready for the jury?

24 (Whereupon, the jury entered the courtroom.)

25 THE CLERK: Do both sides stipulate all sworn

Proceedings

1393

1 jurors are present?

2 MR. PERRI: Yes, your Honor.

3 MR. BERGER: Yes, your Honor.

4 THE COURT: Good morning, everyone. Welcome
5 back. I hope you all enjoyed your long weekend.

6 Members of the jury, you will now hear the
7 summations of the lawyers. Following the summations, I
8 will instruct you on the law and then you will begin
9 your deliberations.

10 Under our law, defense counsel must sum up
11 first and the prosecutor must follow. The lawyers may
12 not speak to you after that.

13 Summations provide each lawyer an opportunity
14 to review the evidence and submit for your
15 consideration the facts, inferences and conclusions
16 that they contend may properly be drawn from the
17 evidence. If you find that a lawyer has accurately
18 summarized and analyzed the evidence, and if you find
19 that the inferences and conclusions the lawyer asks you
20 to draw from that evidence are reasonable, logical, and
21 consistent with the evidence, then you may adopt those
22 inferences and conclusions.

23 Members of the jury, bear in mind the
24 following point:

25 First, you are the finders of fact, and it is

1 for you and you alone to determine the facts from the
2 evidence that you find to be truthful and accurate.
3 Therefore, the lawyers summations are not evidence.
4 What they say is simply argument submitted for your
5 consideration.

6 You have heard the evidence and must decide
7 this case on the evidence, as you find it, and the law
8 as I explain it.

9 Second, during the summations, one lawyer's
10 recollection of the evidence may in good faith differ
11 from the recollection of the other lawyer or from your
12 own recollection. And the lawyers will undoubtedly
13 differ with each other on the conclusions to be drawn
14 from the evidence. It is your own recollection,
15 understanding and evaluation of the evidence, however,
16 that controls regardless of what the lawyers have said
17 or will say about the evidence. You and you alone are
18 the judges of the facts in this case.

19 Third, remember, under our law, I am
20 responsible for explaining the law to you, not the
21 attorneys.

22 Fourth, if, during the summations, I sustain
23 or overrule an objection to a comment of a lawyer, that
24 is simply my ruling based on the law. My ruling is not
25 to be considered as an opinion by me as to what your

Defense summation

1395

1 verdict should be.

2 Remember, under our law, you and you alone
3 judge what facts, if any, are proven and whether the
4 defendant is guilty or not guilty, not I, and not the
5 other attorneys. We now turn to the summations.

6 Mr. Berger, you may proceed.

7 MR. BERGER: Thank you, your Honor.

8 Mr. Ramos's family, Judge Corrigan,
9 Mr. Perri, Mr. Foreman, members of the jury. First, I
10 want to thank you for the careful attention you gave
11 during this trial. It has been long, lots of
12 witnesses, and I could see you were paying attention,
13 and that's extremely important because what I'm going
14 to say to you in my remarks this morning, now, I am
15 going to be commenting on the evidence and significance
16 at this trial.

17 What I say is not evidence, nor is what
18 Mr. Perri says afterwards evidence. It's your
19 recollection that counts. You have a right to have the
20 reporter read back some testimony if your recollection
21 should fail, but bear in mind, as you listen to the
22 reporter read back the testimony, try to recall, and I
23 asked you this in my opening remarks, try to recall how
24 the witness testified, how often. How a witness
25 testifies can be significant, if not more so than what

kmm

1 the witness actually said.

2 Members of the jury, the ultimate question to
3 be answered by you when you go back in the jury room
4 later today, has the prosecutor proved its case beyond
5 a reasonable doubt?

6 One, reasonable doubt. If you have one
7 reasonable doubt about the prosecution's case, then
8 your verdict must be not guilty. The Judge will tell
9 you that. I intend to show many reasonable doubts, not
10 just one.

11 Now, I may be omitting some things in my
12 argument here this morning. It's not because they
13 aren't significant, it's because your collective
14 recollection will be better than mine and your
15 collective wisdom and analysis may be better than mine,
16 as well. If I make arguments to you this morning that
17 you think are speech-ous, devoid of logic without mere
18 right, I invite you now to disregard them.

19 But I ask you, as well, if the prosecutor
20 does the same, do the same, disregard his arguments,
21 and I will assure you he will make arguments to you
22 that have no merit. The prosecutor goes last. I won't
23 be able to respond to what he says, as I would like to
24 be able to. Those are the rules, but consider whether
25 or not the arguments I make to you this morning

1 actually answer his point and whether there is actually
2 other evidence in this case that answers his point as
3 well.

4 Now, members of the jury, you are considered
5 to be the fact finders. What that means is, your
6 province is the facts, and the Judge's province is the
7 law. Being fact finders doesn't mean you have to come
8 up with an exact scenario. It only means that your
9 area that you are covering -- it may be that the proof
10 is insufficient to satisfy you beyond a reasonable
11 doubt. It is insufficient to paint a clear picture as
12 to what happened here, in which case there would be a
13 reasonable doubt, if you listen to the charges by the
14 Judge.

15 The Judge will tell you that the presence of
16 certain facts, or the absence of convincing evidence,
17 can lead you to have a reasonable doubt. That absence
18 of proof is very important here. There are plenty of
19 things that have been demonstrated here with the
20 presence of certain facts that shows the defendant not
21 guilty, but the absence of certain proof can be just as
22 significant. And see whether or not the presence of
23 certain facts, or the absence of convincing proof
24 leaves your mind in a state of uncertainty so you have
25 an actual doubt and that's a reasonable doubt.

Defense summation

1398

1 I don't intend any theatrics or history on
2 anything here this morning. I don't know what the
3 prosecutor will do in that regard. Keep in mind, as a
4 juror, I ask you to use your intellect, not your
5 emotions. I will not make any emotional appeal. I
6 don't intend to make any emotional appeal, but if the
7 prosecutor does, recognize it for what it is and
8 disregard it.

9 Daniel Ramos is charged with one level below
10 the C charge of murder in the State of New York.

11 MR. PERRI: Objection.

12 THE COURT: Sustained.

13 MR. BERGER: Analyze the evidence and use
14 your intellects. I'll help you to do that with you
15 now.

16 What is the prosecution's case all about?
17 Crystal Ramirez walks into her kitchen and sees her
18 daughter without any clothes on her body. It's an
19 ambiguous situation. She doesn't see anything that
20 happens before that. That's clear. And according to
21 the prosecution's witnesses, Mya said, he ate my
22 coochie.

23 And then you have the prosecution presenting
24 a so-called confession by Daniel Ramos that he pulled
25 down her pants, he was going to tickle her pussy with

Defense summation

1399

1 his mouth, and he somehow touched her pussy, her
2 vagina, with his mouth.

3 The third prior evidence that they had DNA
4 evidence showing that Daniel Ramos's DNA was on her
5 underwear, and the underwear has saliva on it.

6 Now, according Mr. Perri in his opening
7 remarks to you, he said this is a very simple case. We
8 have got this case, no question about it. Nothing to
9 concern yourself about, very obvious. I suggest to you
10 if you take a superficial look at the evidence here,
11 you might agree with Mr. Perri, but I ask you to take
12 an in-depth look, not a superficial look and see that
13 the prosecutor's case, as presented to you these last
14 couple of weeks, has no merit at all and certainly not
15 proving guilt beyond a reasonable doubt.

16 Let's start with what happened in the
17 kitchen. Crystal sees her daughter in a situation that
18 she is not happy with. Her daughter is exposed. It's
19 either one or two possibilities. Either Mya is
20 correct, or Daniel Ramos would testify that he was
21 helping her get dressed is correct.

22 But Crystal Ramirez sees it one way and jumps
23 to a conclusion by yelling, what the F. Only she
24 doesn't say F. She uses the word, and she yells it in
25 such a loud way as something bad had happened, and yes,

kmm

Defense summation

1400

1 that's Crystal's conclusion. Why she makes that
2 conclusion, I can't say it, but she does.

3 So, the key in this case, is not the
4 so-called confession, or even the DNA, because I will
5 demonstrate to you, I hope later on, that the
6 confession evidence is absurd, and the DNA evidence
7 isn't significant for the prosecution, except to
8 exonerate the defendant, except to prove he is not
9 guilty of this crime.

10 The key here is Mya -- let me start by
11 saying, talking about Mya. First, Mya, is adorable,
12 but being adorable doesn't mean she is truthful or
13 accurate. Don't let your concern for this adorable
14 girl affect your emotions and overcome your intellect
15 in evaluating this case. I realize you may have
16 imagined Mya being sexually abused orally and anally,
17 or both, and been disgusted by that thought. So would
18 I be disgusted if that indeed happened and that is the
19 issue here.

20 I do feel sorry for her, but not because she
21 was sexually abused, which I suggest to you she was
22 not, but because of her situation at home, having to
23 live under the control of Crystal, who created an
24 environment for her children that I suggest to you was
25 not healthy for them. What do I mean? Consider, that

Defense summation

1401

1 a six-year old girl uses the expression ate my coochie.
2 This has been confirmed by Crystal, confirmed by
3 Detective Baran. You will remember the 911 tape.
4 Although, you didn't hear it, you were asked to leave.
5 It was played for Crystal.

6 MR. PERRI: Objection.

7 THE COURT: Sustained.

8 MR. BERGER: It's in evidence. You were
9 asked to -- you were asked to leave. Crystal said she
10 didn't use that language. We played the 911 tape for
11 her. Now that you heard the 911 tape, did you make
12 those statements to the police? She acknowledged she
13 did.

14 So, where did the six-year old learn this
15 expression? Then Mya uses the expression pecker in the
16 butt. The concept of pecker in the butt for a six-year
17 old is mind-boggling. How does she even know to say
18 something like this, and then the language itself. How
19 many six-year olds even use that kind of language, and
20 then the same six-year old gets whooped with a belt.
21 This frail adorable girl, who can't be weighing very
22 much, has to be whooped with a belt. You need a belt
23 to discipline a young child like that.

24 Now, she and her brother go to counseling
25 with her brother, prior to the October 16th, 2013

1 incident, that is alleged to have occurred here today.

2 And consider Sincere, her brother, his
3 actions on the witness stand were very troubling. He's
4 obviously a troubled youngster who answered questions
5 in a manner like an eleven-year old whose head was
6 down, had ums, pauses in his answers, who didn't answer
7 questions directly. This is not the demeanor of what
8 you expect from an eleven-year old boy.

9 So, consider now that Crystal comes into the
10 kitchen and yells, what the F. Mya knows she is angry.
11 So Mya gets very scared. She knows her mother is
12 unhappy about the fact that her pants are down and that
13 she will get whooped if she is bad. Having her pants
14 down and being undressed is something she knows is bad.
15 And Crystal says to her, did he eat your coochie? And
16 she says, yes. This was her excuse to avoid being
17 whooped. Did Crystal tell the truth here, or did she
18 really leave Mya to say, after, there's my defense.
19 Maybe Mya came up with the idea on her own. Ate my
20 coochie is an expression she knows somehow. Whether
21 Mya said it, or Crystal put the idea in her head, she
22 knows she will deflect any wrongdoing from her and put
23 it on Daniel Ramos. Either way, when she puts it on
24 Daniel Ramos, she knows she is safe.

25 Now, we all know children make things up.

Defense summation

1403

1 It's the nature of the child. They make things up to
2 be accepted by their parents. They want to be
3 approved. They want approval from their parents. No
4 child even likes being disciplined even for the
5 slightest things, but for something as serious as being
6 undressed, she knows a real whooping will ensue.

7 Crystal puts Daniel Ramos out of the house
8 without even asking Daniel Ramos what happened. Daniel
9 Ramos does say Mya is lying, but Crystal is so enraged
10 that she wouldn't even try to find out from Daniel
11 Ramos what happened, a man who has only been good to
12 her and her kids. Excuse me.

13 One key thing here that tells you that Mya
14 made this up occurred when Officer Boccio came to the
15 scene. Officer Boccio says to Crystal, what happened?
16 And Crystal says, he ate my daughter's coochie in front
17 of Mya.

18 Now, while Boccio, Police Officer Boccio,
19 should have taken Mya aside and privately talked to
20 her, he asked Mya, what happened in front of Crystal,
21 and the key thing from Officer Boccio is it took Mya a
22 minute and-a-half to two minutes to give an answer if
23 it really happened. Would it take anything more than a
24 split second? She doesn't want to lie to the police
25 officer, but she also doesn't want to cross her mother.

Defense summation

1404

1 And after a minute and-a-half to two minutes,
2 she decides she is better off not crossing her mother,
3 and she says, what she says to Officer Boccio. Mya is
4 conflicted between saying something that is not true,
5 but at the same time not crossing her mother.

6 Now, we really want to examine the testimony
7 of Mya, a seven-year old, when she testifies almost at
8 eight, and she tells us so many inconsistent things on
9 the witness stand here in front of you, that she should
10 not be believed. As adorable as she is, she is just a
11 child. Please, do not make excuses for her. The only
12 one on trial here is Daniel Ramos. I ask you to use
13 the same critical evaluation of Mya as you would for
14 any witness who testified here in this courtroom for
15 the prosecution or defense witnesses, be as critical of
16 Mya. Don't make excuses for her because she is a
17 child.

18 Bear in mind, as you consider her testimony,
19 that Mr. Perri tried to sanitize her and prepare her
20 for a trial by speaking to her five to six times before
21 coming to court and still, still, her testimony was
22 filled with inconsistencies in some many ways.

23 Remember, in the jury selection process in
24 voir dire Mr. Perri said, could you agree that somebody
25 might tell a story in so many different ways, as if to

1 excuse the inconsistencies that he knew might occur
2 with Mya.

3 The Court will tell you in evaluating
4 witnesses you consider whether or not the statements
5 are consistent or inconsistent. Obviously, the
6 consistency suggests a truthful statement. The
7 prosecutor may ask you to disregard the
8 inconsistencies. So, either his arguments, it's heads,
9 he wins, and tails we lose. Because if it's consistent
10 -- if it's inconsistent, disregard it.

11 So how could you tell whether or not it was
12 being truthful? The law recognizes if you are
13 inconsistent, that's a significant fact in evaluating
14 testimony.

15 Let's talk about how the oral sex supposedly
16 happened. I demonstrated in front of you, you remember
17 this, I asked, what did he do? And I was bending at
18 the waist like this. She said, yes, that's how it
19 happened. He was bending at the waist. Mya is
20 standing. Physically, then his mouth doesn't get
21 anywhere near a vagina. That's the way she says it
22 happened. That's what somebody says when they are
23 making something up. If you are not making something
24 up, you are recreating exactly what happened and all
25 five times bending at the waist like this. Mya is a

1 child. His mouth is nowhere near her vagina, but this
2 is what she says happened, because all she knows is she
3 is supposed to say, he ate my coochie, because she must
4 stick to that script. She can't give you any details
5 about what happened, the circumstances, if anything was
6 said. So that all she knows, if she sticks to that
7 script, then she is covering herself, and she is not
8 going back on what she told her mother way back when.

9 Now, I am going to now give you somewhere
10 between ten, fifteen inconsistencies that Mya gave you
11 that were significant. You may come up with others.

12 First, Mya said all five times it happened
13 that way, that is with Daniel bending over like that.
14 But then she says, five oral sex actions become two or
15 three pecker in the butt times. If it's five, now it
16 becomes two or three pecker in the butt. She said that
17 at all times it happened during the day. Then she says
18 it happened sometimes at night. She said when it
19 happened five times during the day, her mother was
20 home, but then she said at other times her mother was
21 not.

22 Mya says to you, she has never lied. Every
23 child lies, little ones or big ones. Every child lies.
24 Mya has to portray herself to you as somebody who
25 didn't lie, who has never lied.

Defense summation

1407

1 Then she tells the prosecutor just a few
2 weeks before the trial here, 2015, that this happened
3 one time before, but one week after the incident she
4 says to the counselor at South Shore Child Guidance
5 Center, Georgina Devine, that it happened five times
6 before. In other words, she is saying in October of
7 2013, that it happened five times, in addition to this
8 alleged one time on October 16, 2013.

9 Now, she needs to keep herself as a victim in
10 order to avoid her mother's raft. So, five days later,
11 she exaggerates her victimized by saying it happened
12 five times, as kids do, kids exaggerate. Obviously,
13 Georgina -- the counselor knew something had happened
14 and she asked her about it, and she says, it happened
15 five times before. Mya gets sympathy by being believed
16 and being believed she is a victim. Mya simply makes
17 herself more of a victim by saying to her, oh, it
18 happened five times before.

19 When she sees Mr. Perri some eighteen months
20 later, on the eve of trial, she says to Mr. Perri, she
21 forgets the five times. Then she says, oh, it happened
22 once before and for her to come up in this day and age,
23 rather at this late stage, with pecker in the butt, is
24 so out of left field. It's clear it's only from her
25 brain, which she says or her imagination or from

Defense summation

1408

1 something she has heard in her house before in the
2 interim, but it's not real. Another inconsistency. In
3 fact, Mya has actually given three instances, three
4 different numbers.

5 She told Mr. Perri it happened once before.
6 She told Georgina Devine it happened five times before,
7 and the third number, is zero, it never happened
8 before. And who did she tell that to? Cathleen
9 McAllister, the nurse. The only objective witness on
10 this point, presented by the prosecution. She is the
11 professional nurse dealing with sexual assaults. Three
12 separate times Mr. Perri asked Ms. McAllister, what her
13 job was, and three separate times Ms. McAllister said
14 my job is to get a detailed history and to get as much
15 information as possible. That's her job. She knows
16 how to deal with questioning children in these types of
17 cases. That's her job. If Mya said it happened
18 before, it would have been written down by McAllister.
19 Nurse McAllister said that to you. If that would have
20 been told to her, that would have been on that report,
21 which is in evidence. Her failing to write it means
22 that Mya never said to Nurse McAllister, the
23 professional who knows how to see if it happened
24 before, and Mya is not in the presence of her mother.
25 She is alone with her, which is the way it should be.

kmm

1 Now, Nurse McAllister also checked Mya's
2 anus. All was normal. You will see that on the report
3 as well. Do you think that an erect penis going into a
4 six-year-old's anus doesn't do damage? Of course, it
5 does, and this is an objective exam by Nurse
6 McAllister.

7 Then Mya said she doesn't know if she told
8 her mother. She was asked, did you tell your mother?
9 This was the pecker in the butt. She says, I don't
10 know. Do you think, that if a man put his penis in her
11 anus, and that it hurt, she would not tell her mother?
12 Of course, she would.

13 And then when -- there were times when I
14 asked her if it happened five times before, was that
15 the truth? And the answer was, no. When I asked you
16 before, was it five times, were you telling the truth?
17 No, I always forget, she says.

18 Then I asked her, when she told Mr. Perri it
19 happened one time before, her answer was no. She did
20 that two separate times during her testimony. When I
21 asked her, if she told her mother about pecker in the
22 butt, her answer was, yes, or I don't know. If, yes,
23 Crystal does something about this, obviously, and now,
24 it's because it never happened. She said she never
25 heard her mother use the expression to eat. Meaning,

Defense summation

1410

1 eat the coochie. Even though she was standing next to
2 her mother when her mother made the phone call to the
3 police.

4 Both Crystal and Detective Baran acknowledged
5 Crystal uses the word ate, ate her coochie. Mya at one
6 point in her testimony said she bled when the pecker
7 went in her butt.

8 MR. PERRI: Objection.

9 THE COURT: Overruled. Nothing that is being
10 said is evidence, it's just arguments, and you will be
11 the ultimate decider of the facts.

12 You may continue.

13 MR. BERGER: So when you say he put his
14 pecker in your butt, did you bleed? Answer, yes. She
15 said it. You can hear it if you don't recall it. She
16 said it, but then she said later on in her testimony
17 that she didn't bleed, that she didn't say she bled.
18 Here it was within moments later, in the same testimony
19 in -- at one point she said she bled and at another
20 point she said she didn't bleed. Mya has no idea why
21 she didn't tell her mother. The answer is simple,
22 because it never happened.

23 Now, if some man's penis went into her anus,
24 don't you think there would have been discomfort?
25 Don't you think her mother would have noticed some

Defense summation

1411

1 discomfort and the change in Mya's behavior?

2 And then Mya says all of the times that it
3 happened, Mya was always in her pajamas when this
4 happened, even in the daytime.

5 Now, we know in this instance, toward the
6 later part of the day, she is in her pajamas, but
7 always? And this is the story of somebody who never,
8 who is making something up. Rather than deviate from
9 the facts -- she is only seven now. She says, I'm
10 always in my pajamas because she has to repeat the same
11 story she has been asked to tell. Clearly, Mya is
12 making these things up as she goes. These
13 inconsistencies by Mya are some that were there at the
14 time of her testimony. Please don't make excuses for
15 her because she was seven and a cute girl. Consider
16 her as you would any other witness. Start at point
17 zero, as I asked you in voir dire, and be ready to
18 disbelieve as to believe. Remember, only the defendant
19 is on trial here, Mya is not.

20 Finally, I point out to you Mya was pretty
21 together for someone who had been sexually abused five
22 times or even one time because the hospital report says
23 she was alert, attentive, playful, talkative, follows
24 direction and answers questions. Is that behavior of a
25 girl sodomized two or three times, anally or orally, or

Defense summation

1412

1 orally abused two to five times? Clearly, no.

2 Let me turn to the so-called confession. The
3 prosecutor would have you believe that Daniel Ramos
4 gave People's 10 in evidence in English even though he
5 speaks Spanish as his main language. He does speak
6 some English. He doesn't read it very well at all.
7 Why give him his rights in Spanish if his English is so
8 good, which is what the prosecution and Detective Baran
9 would have you believe. It's an old detective's trick.
10 District attorney, the prosecutor here, will argue that
11 the facts in People's 10 came from Daniel Ramos, and
12 because a lot of the facts did come from Daniel Ramos,
13 therefore, all the statements in People's 10 came from
14 Daniel Ramos. That doesn't make sense. Yes, we talked
15 to them. Yes, he thought they were -- he talked to
16 them in Spanish, by the way, which I'll get to in a
17 moment. Yes, he talked to them and gave them facts,
18 which are in the statement that clearly came from
19 Daniel Ramos.

20 Let me suggest to you the following with the
21 so-called confession. That because Daniel Ramos would
22 not admit to them, that he put his mouth on her vagina,
23 they had a problem. How to get Mr. Ramos to sign the
24 piece of paper because what they're going to argue to
25 you is he signed this piece of paper, therefore, he

kmm

Defense summation

1413

1 said it. He signed People's 10, and therefore, he said
2 it. Not, of course, legally the truth. Don't follow
3 that because you signed a piece of paper, you said
4 something. You have to know what is in the paper.
5 They knew that if he was given a statement in Spanish,
6 a statement in Spanish that said, I pulled down her
7 panties and pajamas and told her I was going to tickle
8 her with my mouth, and I tickled her pussy with my
9 mouth. They know if that is a statement in Spanish, he
10 could see that. He's the one that signed that
11 statement.

12 There are other sentences in there too that
13 he didn't say, but that's the key one as far as this
14 case is concerned. I'll deal more with those other
15 sentences later. They knew that if he was given a
16 statement in English, which and he cannot read it, that
17 he would sign it because now Detective Pacheco would
18 never read them those offending sentences, and that
19 particular offending sentence that he tickled her
20 vagina with his mouth or tickled her pussy with his
21 mouth.

22 Just say, the People's case was he read it to
23 him, but he didn't read that sentence. In other words,
24 they believed they could make Daniel Ramos believe that
25 he wasn't signing anything that wasn't true, and I

Defense summation

1414

1 suggest to you that Daniel Ramos would not admit
2 anything to him about putting his mouth on her vagina
3 and this was their problem, how to overcome it. And
4 this is the key fact here that tells you to disregard
5 the offending sentences in the statement.

6 Why do you think Detective Baran never asked
7 Daniel Ramos, have you done this before? Did you do
8 this for sexual gratification? Have you done it to
9 others? If Mya had told Detective Baran it happened
10 one time before, and if Daniel Ramos was so
11 cooperative, just telling everything he knew, why not
12 ask about this one time before? Why not ask when it
13 happened, how this happened, where it happened. And
14 what he did, he didn't ask that. Because this is not
15 Daniel Ramos's statement as far as these offending
16 sentences are concerned. He didn't ask those questions
17 because Daniel Ramos never admitted to doing anything
18 like that.

19 If Detective Baran, as a real pedophile here,
20 you must ask these questions. If you are a sex crimes
21 detective, you must ask who else Daniel Ramos did this
22 to. Any other times with respect to Mya, that's what
23 you ask, that's what you do as a sex crimes detective.
24 Clearly, Daniel Ramos never admitted doing this to Mya.
25 I suggest to you that Detective Baran knew he needed a

kmm

Defense summation

1415

1 confession because Detective Baran had very little
2 confidence it happened at all to Mya. Without a
3 confession, the case relies on Mya alone. This is a
4 child. There is no other evidence at the time. He
5 didn't even know there was DNA, but the DNA is not
6 compelling. In fact, it is exonerated. It doesn't
7 even help the People's case. More on that later.

8 So, Detective Baran recognizes he has this
9 problem, because obviously, Daniel Ramos is not
10 spilling his guts out and admitting anything here. So,
11 he doesn't follow the protocol here. He doesn't follow
12 the protocol when he failed to interview Mya at the sex
13 crimes unit where you would be interviewed by a trained
14 professional, not Detective Baran, but a trained
15 professional about the incident, a trained professional
16 who is skilled and neutral.

17 MR. PERRI: Objection.

18 THE COURT: Overruled. Again, it's not
19 evidence.

20 MR. BERGER: And who would put a child at
21 ease with toys in a room and a comfortable atmosphere.
22 It stands to reason that's what you do with a child as
23 young as this if you are going to try to get the child
24 to open up and be truthful.

25 He says, well, the mother said the kid is too

Defense summation

1416

1 tired. It's very late. Let's do it the next day. Not
2 an unreasonable request by Crystal Ramirez. What about
3 the next day? Detective Baran says he called the
4 district attorney's office and told him not to
5 interview her. They didn't. He didn't make one note
6 about that. Of course, he doesn't know who he spoke
7 to.

8 And do you believe somebody in the district
9 attorney's office would ignore the protocol and not
10 interview Mya, when that is what should be done? They
11 have a whole room set up to interview children now.
12 That is what the protocol is. That's what Detective
13 Baran told you, he is the sex crimes detective, but he
14 didn't do it, even though they had the room available
15 to do it. Wouldn't you, the jury, want to see what
16 this six-year old said back then?

17 MR. PERRI: Objection.

18 MR. BERGER: Now said to you now some
19 nineteen months later.

20 THE COURT: Objection overruled. Again,
21 nothing that is being said is evidence. It's just
22 arguments. It's your recollection that controls.

23 You may continue.

24 MR. BERGER: You want to see what happened
25 back in October of 2013, not nineteen months later

Defense summation

1417

1 after having been prepared by Mr. Perri to try to have
2 her appear credible, try to have her -- to sanitize her
3 as a witness to you. You don't know Mya. You only
4 know what you saw with the very few minutes that she
5 testified. You only know what the prosecutor wants you
6 to know.

7 Baran said he didn't even try to get the
8 defendant's statement on a video. He never asked the
9 supervisor. Let me ask you, if Detective Baran or any
10 sex crimes detective called the supervisor and said to
11 the supervisor, I think we have a real pedophile here,
12 a sexual abuser of children, and he's admitting it, and
13 I need to get him on tape. Do you think the supervisor
14 would say, nah, don't do it? Don't you think the
15 supervisor, if according to Detective Baran, they only
16 have two places, headquarters and the one in Bellmore,
17 let's go open up those offices. Let's get access to
18 the video machine. Let's get Daniel Ramos on tape.
19 You move heaven and earth to get that done if you
20 really have a cooperating person who he is admitting he
21 sexually abused a girl.

22 How about taking out his smart phone, his
23 cell phone. Just have him say it on his cell phone.
24 Yes, I pulled down her pants, tickled her pussy with my
25 mouth. How long does that take and some other

Defense summation

1418

1 incriminating statement? He has her on the smart
2 phone -- everybody has smart phones, even me. He has a
3 smart phone. He has one. He didn't do it. Now, that
4 would be the end of the case if he had Mr. Ramos saying
5 this on tape. There's nothing else for you to
6 consider. And the answer is, he doesn't have it on his
7 cell phone. He doesn't have it on anything because
8 Daniel Ramos never admitted doing this.

9 In this day and age, when most police cars
10 have cameras, and in this day and age when the police
11 department is all over the country providing body
12 cameras to police officers, why are they doing that?
13 Because a public does not have confidence that the
14 police are dealing with the public properly.

15 MR. PERRI: Objection.

16 THE COURT: Sustained.

17 MR. BERGER: You know that. You would cry.
18 You know from reading the papers and seeing the news.

19 MR. PERRI: Objection.

20 THE COURT: Sustained.

21 MR. BERGER: The public has no confidence in
22 what the police are doing all of the time are proper.

23 MR. PERRI: Objection.

24 THE COURT: Sustained.

25 MR. BERGER: Members of the jury, for

1 confessions, it's a necessity. When we catch police
2 officers doing more things, civilians using their cell
3 phones and doing the wrong thing. Not all police
4 officers, not at all. Some have it on tape. No issue.

5 A word about taking notes. I asked the
6 questions of the police officer because it stands to
7 reason what police officers do in their line of work,
8 they should be making notes contemporaneously, that is
9 at the same time they do what they do. It can be a few
10 minutes later, whatever. Taking notes is important
11 because it helps you remember. Relying on memory is a
12 recipe for mistake and false testimony. If you write
13 it down, you are able to recollect better.

14 Officer Boccio never wrote down what he said,
15 what he says Daniel Ramos said. He says, I got to the
16 scene and Daniel Ramos said, arrest me, I raped her
17 daughter. That can't be true, nobody ever said that.
18 How could Mr. Ramos said, arrest me, I raped her
19 daughter when Crystal or anybody claimed he raped her
20 daughter.

21 Then the second sentence was, I made a
22 mistake, I licked her once in the bedroom. Of course,
23 that's not correct here. The allegation is something
24 happened in the kitchen. He never wrote any of those
25 statements down. He comes in -- he's wrong in what he

Defense summation

1420

1 testified to. I'm not saying he's consciously lying.
2 He is just wrong, and he comes in nineteen months later
3 to tell you what he says he remembers being said.

4 Now, for those of you at your jobs, it
5 depends upon the kind of job, aren't you told to make
6 notes, memorandum, data. You are not expected to
7 memorize things, and everybody knows it's helpful to
8 write things down so you can recall. Baran and Pacheco
9 made no notes at all. Really, it means they are free
10 to say whatever they want to say to you. Will you be
11 fooled by them? Will you believe them because they are
12 police officers? The prosecutor is counting on that.

13 A few other factors here with respect to
14 Detective Baran. Only now in court does he understand
15 what the word verbatim means. I mean, really. Does he
16 think you are stupid? Do you think you only discovered
17 it now and verbatim for a detective who is taking
18 statements when you ask the detective about a
19 statement, and I asked him if it was verbatim, that
20 becomes important. He is claiming every word in there
21 was used by Mr. Ramirez, and he knows there is a
22 problem with him saying it's verbatim.

23 And you will see when you look at the
24 statement, for example, Mr. Ramos doesn't use the word
25 pussy. Mya never used the word pussy. That's what the

1 claim is, what he said in there. Mya was supposed to
2 use the word pussy. He realizes now nineteen months
3 later after the rules of tricking into signing a piece
4 of paper, we have a problem now. Only now he
5 understands verbatim. When he asked the question back
6 at here, he didn't understand what it meant. He now
7 realizes the ethicality of taking notes because he took
8 no notes.

9 And then, he said, so interestingly, he did
10 not tell Daniel Ramos what he was charged with because
11 he was afraid Daniel Ramos would shut down. So,
12 therefore, he wanted a statement, come hell or high
13 water, wasn't interested in being fair. What happened
14 to the, you have the right to remain silent. That's
15 the very first right on the rights card. You have the
16 right to remain silent, but he didn't want him to
17 remain silent. He was afraid he was going to shut
18 down. If you are supposed to, according to Supreme
19 Court, tell people you have the right to remain silent,
20 then honor that, but he was afraid he was going to shut
21 down because he wanted a statement.

22 So, is that justification? He said, this is
23 what he said, he wasn't legally or morally required to
24 tell him what he was charged with. But you understand
25 why he didn't, because he didn't want him to shut down.

Defense summation

1422

1 Wouldn't you, if any one of you were charged with a
2 crime, say to a police officer, what did I do?

3 Very simply, you are driving your car and the
4 traffic officer comes to stop you. What did I do
5 officer? It's the first thing you ask. You want to
6 know what he is charging you with. Detective Baran
7 decided he is -- he didn't want to tell us. He didn't
8 want him to shut down. How about being fair? You see,
9 by not telling Mr. Ramos what he is charged with, he
10 doesn't have to deal with the denial that he will get,
11 I didn't do it, because then they have to kind of
12 explain how is it he told you he didn't do it, and now
13 he is admitting that he did. What did you do in the
14 interim to convince he should now admit to you that he
15 did it.

16 The give away also, Baran and Pacheco told,
17 spoke to each other about the circumstances of taking a
18 statement prior to the hearing, prior to the hearing
19 back in last September they spoke about the
20 circumstances of taking the statement. They wanted to
21 avoid any inconsistencies that may arise from the rules
22 in getting Daniel Ramos to put his signature on a piece
23 of paper. Detective Baran claims he read the
24 statement, but only in an undertone, but whatever that
25 means. What he was saying, he couldn't hear him read

kmm

1 it. He has to insist he had in English, which we know
2 he wouldn't do. Daniel Ramos never read the factual
3 part of the statement. He couldn't read. Baran said
4 the rights were given in Spanish. He wanted to be sure
5 he got it in a language he understood. So, even
6 Detective Baran, he knew Daniel Ramos might not
7 understand English very well. He's out of his own
8 words. He wanted him to have the rights in Spanish.
9 That's why he called Pacheco in.

10 So, now, Baran asks Daniel Ramos if he wants
11 to write an apology letter. Why? I asked him. Why
12 did you ask him to write an apology letter? To get as
13 much evidence as I could acquire. How stupid does he
14 think you people are? If he needed more evidence than
15 what is contained in People's 10, ask the defendant.
16 This defendant is supposedly a fully cooperative person
17 under investigation who has already admitted that he
18 licked the pussy of Mya. If he has already admitted
19 that, wouldn't Baran have asked him for how long did
20 you lick her vagina? Was it sexually gratifying? Did
21 you do it before? Where? When and how? Did you do it
22 to other people? This is what you want to know if you
23 are a sex crimes detective. Just ask the person right
24 in front of you who supposedly admitted to doing this
25 to Mya. You don't need anymore. You don't need to ask

1 him to write an apology letter. Just ask him, by the
2 way, did he videotape it so he's admitting everything
3 on the video so we have no issue? He knew he needed
4 more. He knew the statement was ridiculous. That a
5 Spanish speaking man is signing a statement in English,
6 which you can't read.

7 Now he is typing. He writes an apology
8 letter. His signature is on People's 10. They
9 basically told him to sign this and he did. He hoped
10 that Daniel Ramos, in writing the apology letter to
11 Crystal, would admit a real sex act. That he would
12 really admit to doing something to Mya, but Daniel
13 Ramos never did. You heard what he said about that.
14 The apology letter says nothing about licking the
15 vagina of Mya. He clearly hoped to trick him into an
16 admission by saying something to Crystal.

17 He asked him to write a letter to Crystal,
18 which is interesting because Crystal doesn't read
19 Spanish. He only writes in Spanish. You will see
20 People's 11 in evidence, a so-called apology letter.
21 Why was that written to Crystal and she doesn't read
22 it? If he really wanted to write an apology letter to
23 Crystal, type it in English for her to read. This
24 trick by Detective Baran didn't work either. This is
25 not a fair detective, or an honest detective. The

1 so-called apology letter also shows that Daniel Ramos
2 did not commit the crime. If he was apologizing,
3 seriously apologizing, he would actually say it in the
4 letter. He apologized for hurting Crystal's feelings.
5 He was upset that Crystal was upset. He explained that
6 to you when he testified. That's what that apology
7 letter meant.

8 Finally, I ask you to remember the demeanor
9 of Detective Baran. All of the feasible excuses when
10 confronted with his prior inconsistent testimony, the
11 /TKPWEURPL something and discomfort. Did you have
12 confidence this man was being honest and truthful as a
13 witness? I suggest not. Very often, the district
14 attorney likes to argue, why would a police officer
15 lie? It could be lots of reasons. You know they do
16 it. It could be that he lacked like an effective
17 detective, if he gets a confession in a case when you
18 have a six-year old as a complainant. It looks good on
19 his record if he gets a conviction, and there may be
20 many, so many other reasons. I don't need to show you
21 why. We talked about that in voir dire. I only need
22 to demonstrate to you if he lied, and I suggest to you
23 he was not a reliable witness.

24 What happened in the interrogation room?
25 Daniel Ramos spoke to Pacheco in Spanish, not Detective

Defense summation

1426

1 Baran in English, and Pacheco gave those facts to
2 Baran, who typed it in English.

3 I think Officer Boccio -- Daniel Ramos was in
4 that room for eight to nine hours, according to Boccio.
5 Clearly, Daniel Ramos could talk to Pacheco, not Baran.
6 Daniel Ramos told you when he testified on the witness
7 stand that Detective Pacheco's Spanish wasn't that
8 good. So Daniel Ramos knows that because of talking to
9 Pacheco at length.

10 Now, if you remember what the prosecution's
11 testimony was here, all they did was call in Pacheco to
12 give him his rights. Pacheco read from the rights
13 card. He told him to sign. He signed si, and signed
14 his name and went out. How does he know Daniel Ramos
15 Spanish was not that good? In fact, you know Pacheco's
16 Spanish is not that good. When he attempted to read
17 People's 11, the so-called apology letter, he didn't do
18 it very well or very smoothly.

19 Let me turn to Pacheco. Detective Pacheco is
20 so afraid that he will be exposed to collaborate Baran
21 to show that they screamed to get Daniel Ramos's
22 signature on People's 10. He can't deny he was in
23 Mr. Perri's office with Detective Baran. So, he claims
24 he wasn't paying attention to what Detective Baran was
25 saying to Mr. Perri prior to the hearing. He had to

1 admit that Baran talked about their involvement in
2 taking of the statement and the rights card. And they
3 can get together on their own and concocted their
4 story. He had to admit it because Baran admitted it.

5 If you are an honest witness, you tell what
6 you know to the prosecutor or the defense lawyer. That
7 is perfectly proper to the lawyers to question the
8 witness for the -- to get two witnesses in a room
9 together with both of the witnesses together, both of
10 whom were involved in so-called taking of the
11 statements. That's wrong because it allows
12 coordination of their testimony, which I suggest to you
13 occurred here.

14 The key is, they both admit it. They talk
15 about the fact that the defendant speaks Spanish, but
16 the statement is in English. They talked about that
17 fact, as they had to get together and figure out how
18 can we sell it to a jury that this man, who speaks
19 Spanish, some English, signs a statement in English
20 that you can't read. So they came up with the scenario
21 of the statement was written, Pacheco read it in
22 Spanish. That assumes Pacheco read every single
23 sentence in that statement, which I suggest to you he
24 did not.

25 In addition to Pacheco's awkward demeanor on

1 the stand, which suggests to you reflected a lack of
2 credibility, some of the things Detective Pacheco said
3 were ridiculous. After the rights card, he said he
4 left the room. It took just seconds for him to leave
5 the room, but he said under oath, he could tell that
6 Daniel Ramos had no trouble understanding English.

7 Well, you tell me how a couple of seconds you
8 could understand if somebody doesn't have any problem
9 understanding English. Then to him, the word pussy is
10 the same as the word vagina. Even though one is slang
11 and one is a real word, and he says Pacheco is not
12 asked to leave the room. They had to get together
13 where they were not in a room together. That's their
14 story. They did not want to have to testify about the
15 circumstances of how People's 10 got on the written
16 page. They did not want to have to testify, which
17 would result in inconsistencies because when you are
18 making up stories, there are plenty of inconsistencies.

19 Again, if Daniel Ramos gave this statement to
20 Pacheco, then it should have been written in Spanish.
21 And Daniel Ramos would see the offending sentences in
22 there and he would sign it.

23 The prosecution argues that Baran and Pacheco
24 would lie and take such a risk for their career. The
25 answer is, police do lie. Everyone acknowledged that

Defense summation

1429

1 when we had the voir dire in the jury selection, false
2 confessions occur. You all know that. We asked that
3 too. They just don't think they will get caught. No
4 police officer thinks he will get caught. Look how the
5 active police misconduct occur if you are alive and
6 awake.

7 MR. PERRI: Objection.

8 THE COURT: Sustained.

9 MR. BERGER: And you read the paper.

10 MR. PERRI: Objection.

11 THE COURT: Sustained.

12 MR. BERGER: I don't know if the prosecutor
13 will argue the police never do anything wrong. If he
14 argues that, fine. We all know, and I had to ask you
15 in voir dire, because if you didn't have an open mind
16 about police not being truthful, you have to keep an
17 open mind as you open up the possibility of
18 truthfulness and untruthfulness.

19 Then continue to the police department, Baran
20 and Pacheco knew they were safe. So, while, we don't
21 have a video of what they did here, the answers that
22 they gave you at this trial gives them a way as not
23 being truthful.

24 Could we at this time take a break?

25 THE COURT: How much longer do you need,

Defense summation

1430

1 Mr. Berger?

2 MR. BERGER: I know it's been over an hour.

3 THE COURT: You can keep going. I don't want
4 you to break in your summation. You could finish
5 rather than have it broken up.

6 MR. BERGER: Could we come up to the bench
7 for a minute?

8 THE COURT: Sure.

9 (Whereupon, there was a sidebar discussion
10 with the Court and counsel, as follows:)

11 MR. BERGER: Number one, I need a break. I
12 think the jurors also need a break. I can tell from
13 some of their reactions.

14 THE COURT: All right. That's fine.

15 (Whereupon, the proceedings resumed.)

16 THE COURT: I will give you a five-minute
17 break. Don't discuss the case amongst yourselves or
18 with anyone else. See you all in five minutes.

19 (Whereupon, the jury exited the courtroom.)

20 (Whereupon, a short recess was taken.)

21 (Whereupon, the jury entered the courtroom.)

22 THE CLERK: Both sides stipulate all sworn
23 jurors are present.

24 MR. PERRI: Yes, your Honor.

25 THE CLERK: Defense counsel?

Defense summation

1431

1 MR. BERGER: Yes, your Honor.

2 THE COURT: Welcome back. You can continue,
3 Mr. Berger.

4 MR. BERGER: Let me suggest to you calling
5 Sincere was an act of desperation by the prosecution.
6 I suppose he was called to tell you that Daniel Ramos,
7 after saying many times at the house, I didn't do
8 anything, I didn't do anything, suddenly and with no
9 explanation says, I did something. He says he heard
10 this while he was standing on the porch even though Mya
11 and Crystal are standing on the porch, and they never
12 heard Daniel Ramos say anything like that, and he said
13 it to Mr. Perri for the first time on the eve of trial.
14 I suggest to you that it was never said, I guess,
15 because maybe he thinks, well, you wouldn't believe the
16 police officers' statement, you might believe Sincere's
17 statement.

18 Also, he also said that Mya said her tooth
19 was hurting, and that Daniel Ramos said, let me handle
20 it. Neither Mr. Ramos nor Mya said anything about
21 having a bad tooth. I don't know where this scenario
22 came up. It's a reflection of lack of credibility. I
23 cannot explain to you why he testified the way he did.
24 You saw he was a troubled youngster, and I suggest that
25 he cannot be credited by you at all.

kmm

1 A brief word about Crystal. You remember
2 where Mr. Perri said to you in voir dire, do you have
3 to like somebody in order to believe them? Was he
4 referring to Crystal? I don't know. Maybe. I'm
5 suggesting to you that he was. After all, how good a
6 parent is she? She smokes with the kids in the house.
7 She uses language inappropriate for children. She
8 beats Mya with a belt. I don't know what she did with
9 Sincere.

10 What about her character when she is eighteen
11 years old. She has participated in a robbery of a
12 beach bag with a friend of hers. She says she only
13 smacked a girl, but the other person who she was with
14 took her bag and ran away. Crystal ran away with her.

15 So, I would suggest a guilty mind of Crystal,
16 of just smacking her or participating in a robbery, we
17 don't really know. Compare that to Daniel Ramos who
18 when told Crystal will call the police, he stayed and
19 didn't run away and attempted to and expected he would
20 be able to explain what happened to the police, but
21 Crystal should not be believed for another reason. She
22 said on a call to the police, my daughter claims a
23 family friend tried to eat her out, and secondly, he
24 ate her coochie.

25 When she testified, I asked her about those

1 questions. She disputed she used such language like
2 that. She wanted to appear much more civilized and not
3 as crude. She then listened to the tape and she
4 admitted she did make those statements. She wanted to
5 appear more credible to you. She wasn't being truthful
6 to you then until she was confronted with her own
7 words.

8 In a statement she says to the police, a
9 family friend tried to eat her out. Does that mean it
10 didn't happen? Does tried mean it wasn't successful?

11 Let me talk about Officer Boccio. He, too,
12 never took notes about what he -- what happened when he
13 went to the scene back in 2013. He admitted when I
14 questioned him about it at the hearing. When I asked
15 him about that at the trial he said, yes, he made notes
16 and proceeded to take notes out of his pocket. He
17 realized how the situation can't -- how failure to take
18 notes was. The problem is, the notes he had taken, he
19 had written before the trial. He thought he wrote down
20 what happened nineteen months ago. If he did it
21 recently before the trial, therefore, he could say he
22 made notes. He fails to understand the point of taking
23 notes contemporaneously at the same time as the
24 incident becomes significant as far as his memory is
25 concerned. Writing nineteen months later doesn't cure

1 his problem. That's what he thought by writing the
2 notes nineteen months later, that was okay.

3 When you evaluate the testimony of Crystal,
4 Mya, Sincere, Detective Pacheco, Police Officer Boccio,
5 I suggest there is much flowed in their testimony and
6 their demeanor, the manner in which they testified here
7 at trial. Compare that to Mr. Chillseyzn and Nurse
8 McAllister. Their demeanor on the stand was
9 fair-minded, objective witness. They'll tell you what
10 they knew, and what they did. I am confident they were
11 trying to be truthful and fair. It's not what you get
12 from the other witnesses presented by Mr. Perri.

13 The prosecution has put forth many, many
14 witnesses here, but the bottom line is the following:
15 And this is the story that Mr. Perri wants you to
16 believe. This has got to be his theory. A
17 fifty-four-year old man, with an unblemished record is
18 secretly a pedophile or sexual abuser, who having been
19 with children all his entire life in the United States
20 from the 1990's on, never acted on it. The love he got
21 from the children and their parents didn't mean a thing
22 because he secretly had his eye on a six-year-old girl
23 so he could, in the kitchen, lick her vagina, and he
24 did that and with other people around with Crystal,
25 right nearby, and on the porch and with Sincere in the

Defense summation

1435

1 next room watching video games and all of that, he did
2 to satisfy his lust for this six-year old girl. Or his
3 theory will be, Mr. Perri's theory will be he was
4 really doing it five other times with Mya, including
5 anal sex two to three times. A grown man putting his
6 penis in the anus of a six-year old knowing it would
7 hurt and/or cause bleeding, not caring if the child
8 told her mother. He would take that risk. You thought
9 that Daniel Ramos, having this lust for a six-year-old
10 girl would think she wouldn't tell her mother if she
11 bled or if it hurt? Do you think that, and Mr. Perri
12 has to argue Daniel Ramos would count on this girl not
13 telling her mother so he could continue the lust for
14 this six-year-old girl. It's a disgusting thought, but
15 that's what Mr. Perri expects you to believe from his
16 witness. That's what his witness has said, or
17 Mr. Perri said to you. She is not being truthful about
18 the anal sex, if he is arguing that, than he is telling
19 you he wasn't telling the truth to you here in this
20 courtroom.

21 Nurse McAllister examined her. There is no
22 damage to the anus. We know that Mya didn't tell the
23 truth here. One, you know that, how can you rely on
24 her to convict a man of this crime beyond a reasonable
25 doubt?

Defense summation

1436

1 Now, the defendant called five witnesses
2 here. We gave you the full picture in this case, not
3 the distorted picture presented by the prosecution, I
4 would say so. When you learned of the charges here,
5 take a look at Daniel Ramos and you saw a pedophile or
6 a child abuser. I understand how some people might
7 think you are seeing a stranger for the first time in
8 your lives, but the fact that we presented our
9 character witnesses tells you the reputation of Daniel
10 Ramos's kindness and gentleness towards children. You
11 are getting the picture of a real person here.

12 Now, Crystal does admit that Daniel Ramos did
13 many things for her and her children. But you also
14 heard from David Ramos, the son, a Marine of six years.
15 He can't tell you because the rules don't allow --

16 MR. PERRI: Objection.

17 THE COURT: Sustained.

18 MR. BERGER: He can't tell you about the
19 defendant's --

20 MR. PERRI: Objection.

21 THE COURT: Sustained.

22 If the rules don't allow it, he can't say it,
23 counselor.

24 MR. BERGER: He did not say to you what his
25 personal feelings were about his father. He can't say

kmm

Defense summation

1437

1 that, but he did tell you what he heard other people
2 talk about his father saying, that he was a kind and
3 gentle person to children. This is what he heard other
4 people say.

5 Then you heard from Stephany Ramos, David's
6 wife. Before she was a member of the family, she never
7 met Daniel Ramos before. She heard as she was about
8 to, and she was comforted by the fact she heard other
9 people talking about his reputation for being kind and
10 gentle to children because she believed if that's who
11 the father is, then that is the man she will probably
12 marry, and she did marry, and she heard it not just
13 that one time before she was going to meet Daniel, but
14 of other times of other people talking about Daniel's
15 reputation.

16 Now, Mr. Perri attempted to cross-examine
17 those people, you haven't been with them a lot for the
18 last few years because they're in the service. Yeah,
19 that's true. But that's not what this is about,
20 because people don't talk about other people's
21 reputation every day. Life doesn't happen that way.
22 They give you instances which they heard about other
23 people talking about his reputation.

24 So, people talk about that sporadically and
25 they told you what they heard at different instances.

kmm

Defense summation

1438

1 Mr. Perri might say to you when he gets up here, and
2 remember, I can't respond to whatever he says. You
3 can't believe David Ramos, or Stephany Ramos, or Daniel
4 Ramos because they are bias and they have interest in
5 this case. You know what my answer to that is? He's
6 absolutely right. They do have an interest in this
7 case, but that doesn't disqualify them as witnesses,
8 and it doesn't mean they didn't tell you the truth.
9 Wouldn't you, if you were charged with a crime that you
10 did not commit, and you got on the witness stand to
11 tell your side of the story, wouldn't you want to have
12 the opportunity to be believed and not have a
13 prosecutor say you can't believe that person? I can't
14 believe you, because you have an interest in the case.
15 Every defendant in a criminal case has an interest in
16 the case. That doesn't mean they all lie. Some tell
17 the truth, some don't. I'm asking you to recognize if
18 Daniel Ramos told the truth.

19 I'm asking you to evaluate them as I asked
20 you to evaluate all of the prosecution witnesses. I
21 submit to you they were forthright, had an honest
22 demeanor on the witness stand and should be credited by
23 you.

24 I also called Christy Hernandez, a woman with
25 young children who spent two years living in-house of

1 Daniel Ramos a number of years ago. She is not related
2 to them. In fact, she hasn't really had much contact
3 with the family in the last few years. She, too, told
4 you about her reputation. She heard of Daniel Ramos
5 being kind and gentle to the children, and she had two
6 children living in the house as well.

7 Now, in the statement, to counteract the
8 reputation of evidence, the prosecution called Joshua
9 Hanson to say that being kind and gentle to children is
10 the starting point for grooming them for eventual
11 sexual abuse. So, with that approach, members of the
12 jury, all teachers who give special attention to
13 children, they're suspect. Foster parents who take in
14 to provide a home for children, they're all suspect.
15 Personnel, or whoever works in group homes, they're all
16 suspect. Charity employees, who work to help children,
17 they're all suspect. All pediatricians. The list goes
18 on, and on, and on.

19 That's not how it works. With all of those
20 people, are we going to suggest they're pedophiles,
21 sexual offenders. Mr. Perri would ask you to believe
22 that that is Daniel Ramos. Even though working as a
23 bus driver for thirteen years there was never, never, a
24 complaint by any parent about any improper action with
25 a child. So Mr. Perri would have you believe with that

1 reputation, carefully developed by Mr. Ramos, he was
2 developing a good reputation so he could, one day,
3 abuse and lick the vagina of a six-year-old girl.

4 His witness testified that the approach taken
5 by a child abuser is to groom them so they could be
6 alone with the child deceptively getting the confidence
7 of those in charge of the child, normally parents, or
8 whoever else is in charge of the child. But Mya wasn't
9 alone. Crystal was in a nearby room. Sincere was also
10 in a nearby room. So, the offer by Mr. Hanson about
11 getting these children alone so he could abuse them,
12 didn't happen here. The people were in the house.
13 Besides, if Daniel Ramos was trying to groom Mya so he
14 could abuse her, he would have been making all of the
15 calls to Crystal to be nearer to Mya, but that's not
16 the testimony here. The testimony was, it was Crystal
17 who called Daniel Ramos to come over, not Daniel Ramos
18 calling Crystal.

19 So, if Mr. Perri makes that argument about
20 Daniel Ramos grooming so he could abuse Mya, see it for
21 what it is. It's a desperate move to support his case,
22 which is really a house of cards. That is, there is no
23 substance to his arguments or his case.

24 Let me turn to the DNA evidence and Dr. Karl
25 Reich. You will recall the opening of Mr. Perri, he

Defense summation

1441

1 triumphantly pointed out to you we have DNA evidence in
2 this case, and there was one in 175 million chance that
3 DNA in the underwear of Mya was Daniel Ramos. Well,
4 that's fine, and it might be fine if our position was
5 that wasn't Daniel Ramos DNA, but it was his DNA. At
6 least I can't be excluded. We don't contest that.

7 The problem is, if you take a superficial
8 look at DNA, just like the rest of the case of
9 Mr. Perri, he wants the superficial look. I'm asking
10 you to take an analytical in-depth look. We see that
11 the forensic report failed to reveal that the fact that
12 Daniel Ramos's DNA was in her underwear, is of no
13 moment to this case. The forensic report actually
14 exonerates, and I told you this before, exonerates
15 Daniel Ramos. That's why the prosecutor wants you to
16 take a superficial look at the case.

17 We gave you a complete picture about what the
18 lab analysis means. The prosecution wants you to jump
19 to a conclusion because the DNA is in the underwear,
20 and that there is saliva that he never licked her
21 vagina.

22 But you learned quite a few things from
23 Dr. Reich and the real expert with incredible
24 credentials who explained to you that the lab report
25 and the test do not support that Daniel Ramos licked

Defense summation

1442

1 Mya's vagina. Daniel Ramos is a -- I mean, Dr. Reich
2 is a scientist, a neutral scientist with no ax to grind
3 with either the defense or the prosecution. In fact,
4 law enforcement hires Dr. Reich to teach them.

5 MR. PERRI: Objection.

6 THE COURT: Sustained.

7 MR. BERGER: You heard the testimony. You
8 heard the testimony Dr. Reich told you he has taught
9 DNA and testing to law enforcement. If I'm wrong and
10 you want to hear it back, and it's not there, then I'm
11 wrong. He said it. He taught law enforcement and DNA,
12 DNA testing, and the methods used in DNA testing. They
13 think so highly of him that they --

14 MR. PERRI: Objection.

15 THE COURT: Sustained, again. Nothing they
16 say is evidence, and it's your recollection of the
17 testimony that will control in this matter. Go ahead.

18 MR. BERGER: He was hired by them. He told
19 you he was. We can have it read back. I'll now
20 discuss what he found in his case. There are two lab
21 reports. One on February -- dated February 27th and
22 one on February 28th, and the rest of the material is
23 in evidence that is what we call the bench notes, and
24 the electropherographs, and that's the software showing
25 what grafts you will see in all of that documentation.

kmm

Defense summation

1443

1 The lab reports are the conclusions given by the lab
2 technician in this case, Mr. Chillseyzn.

3 Now, there are three key testing places that
4 are significant here at this trial, one the vulva swab,
5 two, stain 1-A1, and three, stain 1-A2. There are two
6 stains in the underwear. The fourth, the analysis of
7 the dried secretions also plays a part for the smaller
8 one.

9 The first key area is the vulva swab. Those
10 are the swabs taken directly from the vulva and vagina
11 of Mya. This test actually exonerates the defendant,
12 and this was the very first question, one of the first
13 questions I asked her with respect to the lab report.
14 Does the lab report and the electropherographs support
15 the conclusion that Daniel Ramos licked Mya's vagina?
16 The answer was no. While the vulva -- while there was
17 life was found on the vulva swab, no DNA of Daniel
18 Ramos was there.

19 And Dr. Reich's opinion, that saliva was that
20 of Mya, because Mya's DNA was the most DNA of all of
21 the DNA on the vulva swab, 1-A1 and 1-A2. Most of the
22 DNA was Mya's. By far, he said, not even close. No
23 male DNA was found on the vulva swab. Although,
24 Dr. Chillseyzn testified as to male genetic material
25 found on the vulva swab, no DNA profile could be made.

Defense summation

1444

1 Dr. Reich disputed the fact there was any
2 male genetic material on the vulva swab. I pointed out
3 that the peaks were insufficient. If it was male
4 genetic material, or noise -- in other words, the peaks
5 were insufficient to tell whether it was male genetic
6 material or noise. The peaks were also insufficient in
7 the report.

8 The February 27th report, and I suggest if
9 you are going to look at these things, look at 2/27,
10 2/28, the first two pages of the 27th report is the
11 summary, one page. On the 28th report, there is a
12 summary. Look at those things. The key was, YSTR
13 typing was done. The YSTR was that related to the
14 males, only males show up on YSTR typing. Peaks were
15 depicted, which did not meet laboratory criteria for
16 allele identification. Therefore, the peaks are not
17 reported. That's in the report.

18 So, if the peaks were not reported, and yet,
19 Mr. Chillseyzn comes in and suggests to you male
20 genetic material, there's nothing in the reports
21 talking about male genetic materials on the vulva
22 swabs. This is the last ditch effort to try to help a
23 case that can't be helped.

24 So Chillseyzn's report, in the reports the
25 peaks were insufficient to report the peaks reflected

kmm

1 male genetic materials. The peaks were insufficient
2 and it says nothing about the male genetic material and
3 he never at least came to that.

4 Dr. Reich pointed out that Mr. Chillseyzn's
5 trial testimony was not justified. Could not justify
6 it, and he looked at all of those pages in there with
7 the electropherographs, all of the software testing
8 done on the material involved. Dr. Reich looked at it
9 and said it could not be justified, and Mr. Chillseyzn
10 was, in fact, wrong. Of course, Dr. Reich was
11 diplomatic about it. He didn't disparage
12 Mr. Chillseyzn in any way, but this man with his
13 expertise and qualifications came to that conclusion.
14 The height of the peaks were so low, a conclusion about
15 being male genetic material is just a desperate
16 maneuver by the prosecution.

17 Now, Mr. Perri cross-examined Dr. Reich on
18 the fact that three of the rows related to a gun case.
19 Dr. Reich admitted he made a mistake that parts of the
20 electropherographs that did apply to this case showed
21 the peaks too low and didn't change anything he said
22 before when he referred to the electropherographs that
23 do apply to this case, didn't change his opinion at
24 all. I suggest to you that Mr. Chillseyzn's testimony
25 here about male genetic material was a desperate move

Defense summation

1446

1 by the prosecution, which is not justified by science.

2 Now, for the prosecution to cross-examine
3 Dr. Reich that he was reading from a gun case on some
4 of the electropherographs there was, I suggest, dirty
5 pooling.

6 MR. PERRI: Objection.

7 THE COURT: Sustained.

8 MR. BERGER: You can evaluate what he did
9 here.

10 MR. PERRI: Objection.

11 THE COURT: Overruled on that last statement.

12 MR. BERGER: You could evaluate what he did
13 here. This is what I suggest, an attempt, a gotcha
14 moment.

15 MR. PERRI: Objection.

16 THE COURT: That's sustained.

17 MR. BERGER: Anyone can make a mistake, and
18 not see the mistake, but bear this in mind, these
19 documents were provided to defense by the prosecution.
20 The document that Dr. Reich looked at were provided to
21 him by me when I got these documents from the
22 prosecution, and represented as documents for this
23 case. They gave us documents that were not part of
24 this case. So either, the lab didn't see it or they
25 were being deliberately deceptive and the prosecutor

Defense summation

1447

1 didn't read it either.

2 MR. PERRI: Objection.

3 THE COURT: Sustained.

4 MR. BERGER: The prosecutor, is he
5 acknowledging he turned over the documents?

6 MR. PERRI: Objection.

7 THE COURT: Sustain.

8 MR. BERGER: He turned --

9 THE COURT: Counselor, sustained. Please
10 move on.

11 MR. BERGER: The documents provided to you
12 were provided by the prosecution. The prosecution
13 presumably read them. If he didn't read them, then he
14 turned over documents he shouldn't have because they
15 were not part of this case.

16 MR. PERRI: Objection.

17 THE COURT: Sustained.

18 MR. BERGER: Did the prosecution ever say, by
19 the way --

20 MR. PERRI: Objection.

21 THE COURT: Counselor, these are all
22 sustained. Please move on. Talk about the evidence.

23 MR. BERGER: I am commenting on the evidence,
24 Judge. Those electropherographs, referring to the gun
25 case, were not part of the case, but given to me by the

kmm

Defense summation

1448

1 prosecution. Mr. Perri's approach to criticize
2 Dr. Reich, giving me the electropherographs that don't
3 apply to this case, but to a gun case, is like the son
4 that kills his parents.

5 MR. PERRI: Objection.

6 THE COURT: Sustained.

7 MR. BERGER: And then asks for mercy because
8 he is an orphan.

9 THE COURT: Sustained. The last two
10 sentences are stricken from the summation.

11 Please move on, counselor.

12 MR. BERGER: If it's not evidence, what
13 difference does it make?

14 THE COURT: Counselor, you have my ruling.
15 Please move on.

16 MR. BERGER: Mistakes can be made. The lab
17 made it first. When they turned over some of the
18 documents, that doesn't apply to this case. That
19 doesn't change the conclusion by Dr. Reich. Even the
20 lab agrees that peaks were detected that didn't meet
21 laboratory criteria for allele identification. I read
22 that to you before from the report.

23 Now, I mentioned that Mya's DNA was on the
24 vulva swab, and it what was her saliva on the vulva
25 swab. No male genetic material was found on the vulva

Defense summation

1449

1 swab, notwithstanding what Mr. Chillseyzn said.

2 Dr. Reich said that if a male licked the
3 vagina, you would expect to see a large amount of DNA.
4 Saliva is a rich source of DNA, he said. It's sticky
5 and would remain for hours. Especially, if the
6 underwear is pulled up the right way, as Crystal said
7 she did pull up the underwear of her daughter, but
8 there is no male saliva, no male salvia on the vulva
9 swab. In fact, even Mr. Chillseyzn said that the
10 vulva -- in Mr. Chillseyzn testimony it was indicated
11 there was some saliva on the vulva swab. Oral swab
12 doesn't get tested for saliva. You could expect the
13 victims own saliva to be there. That's what
14 Mr. Chillseyzn said. You could expect the saliva from
15 Mya to be there. Both experts agree the saliva on the
16 vulva swab was Mya's.

17 Those of you who wonder how a child's saliva
18 can get on her private area and underwear, Dr. Reich
19 pointed out how. He said the child's hygiene is not as
20 careful as an adult. You put your fingers in the
21 mouth, you touch your body, cough, sneeze, that's
22 saliva. Remember, Mya took her clothes off, according
23 to Mr. Ramos, so she had to touch her underwear and
24 herself, and this is very small material. You can't
25 even see it. So, it's easily transferred, and again,

Defense summation

1450

1 both experts agree that it was Mya's saliva. No one
2 says it was the defendant's saliva.

3 Dr. Reich pointed out that the amount of
4 saliva is small because if there were a lot, the dried
5 secretions would also show saliva and it did not. So
6 all things considered, there would have been a lot more
7 DNA and male DNA if Daniel Ramos had licked Mya's
8 vagina.

9 There are two other stains on the vulva swab.
10 I suggest to you it shows beyond a reasonable doubt
11 that the defendant is innocent.

12 Let me deal with the two stains as well. The
13 summary shows 1-A1 stain, 1-A1 as Daniel Ramos's DNA,
14 and we can see that Daniel Ramos's DNA is there. But
15 stain 1-A2, has two male DNA there. Not one, but two.
16 The prosecution never attempted to determine whose DNA
17 that is. Obviously, the DNA is the touch DNA, but
18 shouldn't the prosecution have investigated who the
19 second male is? Again, absence of proof by them. Why
20 not? Why didn't they do that? If someone did
21 something improper to Mya, why isn't the second male a
22 suspect also? And as I said, the absence of proof can
23 create a reasonable doubt. If the prosecution argues
24 that the saliva on the two stains could be from a male,
25 then why isn't the second male a suspect here?

kmm

Defense summation

1451

1 There is no test, and I know this is very
2 confusing to you. You haven't probably known -- have
3 you ever dealt with DNA? There is no test to
4 differentiate the contributor to the saliva from the
5 touch DNA. In other words, on that stain you have
6 Mya's DNA, Daniel Ramos's DNA, and a second male DNA,
7 but there is no test to tell you whose DNA, saliva and
8 whose DNA is touch DNA. You can't touch it. You just
9 know the DNA is there.

10 The opinion of Dr. Reich, based upon his
11 analysis of all of the stains on the vulva swab and the
12 two stains and the lack of DNA on the vulva swab of any
13 male genetic material or male DNA was it was all Mya
14 and even Mr. Chillseyzn agrees it was Mya's saliva on
15 the vulva swab.

16 The prosecution's failure to determine who
17 the second male is reflects a lack of will to present
18 all of the facts to you. You, the jury, should feel
19 confident they did all they could to present truth to
20 you, by not doing so it reflects a lack of integrity on
21 the part of the prosecution and to have all of the
22 evidence presented to Daniel Ramos and not a real
23 search for the truth.

24 Dr. Reich, who said there is a minor
25 contributor and a minor contributor of the two males is

kmm

1 not significant. All that means is there's more DNA
2 for one male than the other, and he put in the charts,
3 exhibits C and D in evidence from the defense, when he
4 said pretty close anyway, the amount of DNA from both
5 males. Still, he said since you can't quantify the
6 amount of saliva on the two stains, it's very small.
7 We're talking about very small material here, but
8 because of no saliva in the dried secretions, there is
9 not a lot of saliva on the vulva swabs or the two
10 stains at all. And again, if there is a male licking
11 the vagina of a six-year old, you would have expected a
12 lot more DNA, and there was none on the part of the
13 defendant.

14 Another failure by the prosecution here, in
15 the absence of proof, which can create a reasonable
16 doubt, is that they did not test the non-stained area
17 of the underwear. In other words, they took an area
18 that the two stains had saliva in it, but if you test
19 the non-stain area, and you find Ramos's DNA, then you
20 know that is touch DNA. They didn't do that. That's
21 part of a scientific method. It's called sub-straight
22 control. Those technical languages used by Dr. Reich,
23 sub-straight control, is a necessary tool for trying to
24 evaluate the evidence. The lab didn't do it here.
25 They should have cut out another part of Mya's

1 underwear and for sure since Mr. Ramos had handled the
2 underwear, his DNA would be on it. This is another
3 failure by the prosecution that they did not do it.

4 You heard from Daniel Ramos. You heard him
5 testify here at this trial. I told you that he went up
6 and asked permission from Crystal to go to the
7 bathroom. When he went to the bathroom area, he saw
8 Mya outside with no clothes on her bottom and clothes
9 in her hand. She wanted to follow him into the
10 bathroom. He said, no, no, you stay out. He then went
11 to the bathroom, came out, and there was Mya still
12 without her clothes on. He knew that if Crystal saw
13 her roaming around the house without any clothes on her
14 bottom, she would be upset. What he did was attempted
15 to help her put her clothes on, and he put her legs in
16 both of the underwear opening and pajama openings. He
17 did not want to pull up the pants because he didn't
18 want to touch her in an area that would be
19 inappropriate. He told her get up, pull up your pants.
20 Before that could happen, Crystal walked into the room.
21 I suggest to you that Mr. Ramos' demeanor, and his
22 answers reflect the truthful person. His testimony
23 shows you he is concerned about both children here.
24 He's concerned by the smoking by Crystal and the
25 effects on the children. Crystal, herself, knew how

1 good Daniel Ramos was with the kids, otherwise, she
2 would have never allowed him to play with them and be
3 alone with them and baby-sit.

4 She knew he was the nice kind of person that
5 other people have testified to here before, as far as
6 his reputation is concerned. Crystal asked him to tend
7 to the kids' homework while she was drinking out on the
8 porch Long Island ice teas. She is not the best mother
9 in the world by far, but she was not going to let a
10 person be with her children if she had the slightest
11 inkling that he was a child abuser.

12 This man, who had a reputation of being kind
13 to children, a reputation not too many of us have, is a
14 special person. Critical to me, and I hope important
15 to you, are the comments by two of the three character
16 witnesses about Daniel Ramos being a funny man, someone
17 who is funny, enjoys entertaining people, making them
18 laugh. Quite the opposite of a sexual abuser who has
19 to be dark and devious in an effort to deceive parents
20 to get the children alone.

21 Daniel Ramos didn't run when he knew Crystal
22 was calling the police, but in this day and age, when
23 the police come and there's an accusation by a child
24 that something happened to them in a sexual manner,
25 that the police arrest, they have no choice. But we do

Defense summation

1455

1 have professionals who know how to interview, but they
2 didn't do that here. So, Daniel Ramos sits in jail for
3 nineteen months. Had Mya been interviewed by a
4 professional, I feel confident --

5 MR. PERRI: Objection.

6 THE COURT: Sustained.

7 MR. BERGER: Mya was not interviewed by a
8 professional. Never has been. All we have is her
9 testimony between Mr. Perri and the girl presented to
10 you here supposedly in a sanitized way to help make you
11 believe her. I already demonstrated before as to why
12 you should not.

13 Daniel Ramos worked hard all of his life.
14 Met his wife in 1980, been with her since. He raised
15 two boys. He opened his home up to relatives and
16 strangers. He used the nineteen months in jail to
17 improve his English, both speaking and reading. He was
18 a trusting soul on October 16, 2013. The police told
19 him to sign documents and he did. He never suspected
20 he was being duped into signing a paper admitting to
21 something he never did. He never said to anyone, I was
22 going to tickle her and pull -- I pulled down her pants
23 and tickled her pussy with my mouth, nor did he say I
24 was playing with you. And she said, no, he was licking
25 my pussy. We know he didn't say that. And a pussy, he

kmm

Defense summation

1456

1 didn't use that word pussy and neither does Mya. She
2 used the word coochie. According to the statement,
3 she, Mya, used the word pussy twice. Nor did Crystal
4 ever say that Mya used the word pussy. Again, the only
5 way we know what was said and what happened is if there
6 was video here. A signature on a piece of paper is
7 supposed to mean that sinner of the paper adopts the
8 statements that are in it. But if you don't know what
9 is in the statement, you think you are being dealt with
10 fairly. If you sign it, you are not adopting the
11 statement, and Mr. Ramos never adopted the statement,
12 number ten. Nor did he really understand what the
13 signature on the rights card meant.

14 Mr. Ramos was a good friend. When Crystal
15 asked, he offered. Although, not always, but he tried
16 to accommodate her. She had no car. He had a car. He
17 drove her to the supermarket, doctors' appointments,
18 drove the children to South Shore Guidance Center, did
19 a lot of things for Crystal. This was not the daily or
20 weekly thing. Crystal said it didn't happen, but when
21 it did, Mr. Ramos tried to oblige.

22 Daniel Ramos was that good a person, with no
23 ulterior motives. Daniel Ramos loaned Crystal money,
24 bought things for her and her kids, often not getting
25 reimbursed. He liked doing kind and generous things,

Defense summation

1457

1 and was okay with not being paid. He's not a rich man.
2 Few bus drivers are, but the small financial benefits
3 that he gave to Crystal, and specifically, the
4 children, were reward enough for him. If Mr. Perri
5 tries to turn that around and make Ramos out to be a
6 sexual offender, then see it for what it is, a
7 desperate claim to win the case.

8 The evidence here tells you Ramos is not
9 guilty of the charges. Bear in mind, as you consider
10 the case in the jury room, it's not your function to
11 determine how the prosecutor could be right, only if
12 the prosecutor proved its case so convincing and beyond
13 a reasonable doubt. Not guilty doesn't mean that the
14 police lied or anybody lied, because they're not on
15 trial here. Although, I suggest to you Baran and
16 Pacheco didn't tell the truth. It only means you have
17 a reasonable doubt about the guilt of the defendant.
18 And the sufficiency of the evidence here, you all
19 agree to hold the defendant innocent and presume the
20 defendant innocent, and to hold the prosecution of
21 proving guilt beyond a reasonable doubt.

22 Probably is not good enough. If there
23 somebody in there that says I think he probably did it,
24 not good enough. I suggest to you the DNA and
25 everything else shows innocent. Probably guilty is not

kmm

1 good enough at the character evidence. The judge will
2 tell you that could create a reasonable doubt, if you
3 have, but then the character evidence comes up the
4 reputation evidence that itself alone can create a
5 reasonable doubt.

6 The prosecution may argue to you I did not
7 have to prove guilt beyond a reasonable doubt. I don't
8 know what all doubt means. I wouldn't even attempt to
9 define what all doubt means. I wouldn't attempt to
10 define what certainty means, but I ask you to listen
11 carefully to what reasonable doubt is, not what it is
12 not. If I were to ask you to define a giraffe, you
13 wouldn't say it is -- it's not a snake. It's not an
14 elephant, not an otter. By knowing what it is not,
15 doesn't tell you it's elongated, brown, with a long
16 enough neck. I'm only ask you to consider what
17 reasonable doubt is, not what it is not.

18 Consider whether or not after you are
19 considering all of the evidence you have an actual
20 doubt or lack of convincing evidence that creates an
21 actual doubt for you. It's always gratifying to talk
22 to jurors afterwards when they understand the consent
23 of doubt. That's the cornerstone of democracy seen.
24 It keeps the government announcing the things we didn't
25 do. What it means is, twelve neutral people have

Defense summation

1459

1 decided there is a reasonable doubt and we don't
2 convict for that. That protects all of us. That's why
3 it's important for you to understand this concept.

4 You may hear language that a few things in
5 life are certain. I don't know if that's accurate as
6 it applies to this case.

7 MR. PERRI: Objection.

8 THE COURT: Sustained.

9 MR. BERGER: I don't know if it is accurate
10 if it applies to this case.

11 MR. PERRI: Objection.

12 MR. BERGER: If there were a video of
13 Mr. Ramos admitting this, that's pretty certain.
14 Daniel Ramos on the vulva swab, that would be pretty
15 convincing and certain. Those emotions here only show
16 the defendant did not confess, and he did not lick the
17 vagina of Mya. At the very least, they must create at
18 least one reasonable doubt.

19 Members of the jury, I've spoken a long time.
20 To give me -- if what I stated to you is obvious -- I
21 never take juries for granted. I have no idea what you
22 are thinking. You are hearing the same thing. I don't
23 know what is in your mind. So, because I don't know
24 that, I've tried to cover all of the points that I
25 thought were essential. Nineteen months ago, false

Defense summation

1460

1 accusations by a six-year old cost Daniel Ramos
2 nineteen months in the steamer.

3 MR. PERRI: Objection.

4 THE COURT: Sustained.

5 MR. BERGER: Nothing happened to Mya. I ask
6 you, based on the evidence here to give Daniel Ramos
7 back his freedom because the evidence here demonstrate
8 that the defendant is not guilty. Thank you.

9 THE COURT: All right, ladies and gentlemen,
10 given the hour of the day, this will be a good time for
11 you to break for your lunches. Please remember to keep
12 an open mind throughout this trial.

13 Do not discuss the case amongst yourself or
14 with anyone else during the trial. Do not permit
15 anyone to discuss it in your presence.

16 Do not talk to the lawyers, witnesses or the
17 defendant about anything during the trial. Do not
18 visit the area of the charged crime, or any other place
19 involved in the case.

20 And if there is any news coverage of the
21 case, do not read, view or listen to any accounts or
22 discussions of the case reported by the news media.

23 Do not attempt to research any fact, issue or
24 law related to this case, whether by discussion with
25 others, by research in the library, or Internet, or any

Defense summation

1461

1 other means or source. Have a great lunch. See you
2 all at two o'clock sharp.

3 (Whereupon, the jury exited the courtroom.)

4 THE COURT: Anything for the record?

5 MR. PERRI: No, your Honor.

6 MR. BERGER: No, your Honor.

7 (Whereupon, a luncheon recess was taken.)

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1 A F T E R N O O N S E S S I O N

2

3 THE CLERK: Case on trial continued,
4 Indictment Number 742N of 2014. People of the State of
5 New York vs. Daniel Ramos.

6 Let the record reflect, all parties are
7 present. The jury is not present at this time.

8 People ready?

9 MR. PERRI: Yes, your Honor.

10 THE CLERK: Defense ready?

11 MR. BERGER: Yes, your Honor.

12 THE COURT: Anything for the record, People?

13 MR. PERRI: No, your Honor.

14 THE COURT: Defense?

15 MR. BERGER: No.

16 THE COURT: Given the hour of the day and the
17 fact I'm walk-in, it is likely I will charge them
18 tomorrow morning because my charge is about an hour.
19 If your summation runs a little more than hour, they're
20 not going to have but five to ten minutes to deliberate
21 today. That would make no sense. After your
22 summation, Mr. Perri, I will release the jury for the
23 day and we will charge them in the morning.

24 MR. PERRI: Yes, your Honor.

25 (Whereupon, the jury entered the courtroom.)

People's summation

1463

1 THE CLERK: Do both sides stipulate all sworn
2 jurors are present; People?

3 MR. PERRI: Yes, your Honor.

4 THE CLERK: Defense counsel?

5 MR. BERGER: Yes, your Honor.

6 THE COURT: Good afternoon, everyone.
7 Welcome back. I hope you enjoyed your lunch.

8 MR. PERRI: Good afternoon. Before starting
9 my actual summation, there's one grievous
10 misrepresentation of the record defense counsel made
11 toward the close of his summation that has to be
12 addressed now and you should consider in evaluating all
13 of the arguments defense counsel asked you to follow to
14 abide by during your deliberations.

15 Defense counsel stated Mr. Chillseyzn agreed
16 with his expert that the DNA, that the saliva, rather
17 was Mya's. That is patently false. That did not
18 happen. That was never stated by Mr. Chillseyzn, and
19 when defense counsel represented -- was reading to you
20 from the record, he mischaracterized that testimony,
21 and he excerpted that testimony on page 141, in lines
22 14 through 17 to read as follows:

23 Mr. Chillseyzn, answering a question about
24 what was done with all of the swabs. The vulva swab
25 was indicated there was saliva of the vulva swab. The

People's summation

1464

1 oral swab doesn't get tested for saliva. You could
2 expect the victim's own saliva to be there, on the oral
3 swab, not on the vulva swab. It was an oral swab of
4 Mya, not her vulva or an oral swab from her own mouth.
5 Of course, Mr. Chillseyzn there would coincide that is
6 going to have her DNA, her saliva, and it could be
7 assumed to be from her. That isn't what was in the
8 testimony, and defense counsel, what he stated to you
9 simply was false.

10 Now, ladies and gentlemen, I stood before you
11 approximately three to four weeks ago and I told you
12 that this case was painful, but it was simple. After
13 you looked at all of the evidence and you sat here
14 through a lot, I come back before you and say the
15 answer hasn't changed. It is painful and simple.

16 Defense counsel argued you can't credit any
17 of the People's testimony. You have to ignore all of
18 the physical evidence put before you in this case, but
19 to agree with defense counsel's position, what we
20 really need to do is shut down and ignore your common
21 sense. You need to ignore all of the levels of
22 separate and independent evidence that corroborates,
23 that backs up what Mya Ramirez said before all of you
24 when she sat there, a seven-year old on the stand.

25 She sat there alone. She, in fact, sat there

kmm

1 in front of the defendant, her abuser. She sat in
2 front of an audience of strangers, of adults and told
3 you what happened to her. She told you that the
4 defendant, this defendant, whom she named, whom she
5 pointed out in front of all of you, that he had oral
6 sexual contact with her vulva or vagina. The
7 defendant, in her words, licked her coochie, is what
8 she said on the stand, and she has not waivered about
9 what happened on October 16, 2013. She hasn't
10 equivocated. She has not changed her story about that
11 day in any meaningful way over the last nineteen
12 months.

13 You cannot ignore just because she is a
14 child, as defense counsel urges. You cannot ignore
15 Crystal because she is crude, as defense counsel urges.
16 You can't ignore Sincere because he cried and broke
17 down on the stand. Most importantly, ladies and
18 gentlemen, you cannot ignore all of the other separate
19 and independent evidence apart from the Ramirez family
20 that tells you what Mya said before all of you, what
21 Sincere said before all of you, what Crystal said
22 before all of you, is true.

23 You cannot ignore the defendant's own
24 admission to Officer Boccio that he licked her, his
25 written confession to Detective Baran and Pacheco that

People's summation

1466

1 he was playing a tickle game with his mouth, and the
2 uncontroverted one in 175 million match with the
3 defendant's DNA of the profile inside the front of
4 Mya's underwear in a saliva stain.

5 You can't ignore all of that, ladies and
6 gentlemen, because when you took an oath as juror, you
7 promised not to ignore your common sense. According to
8 the defense, you can't rely on any of this
9 corroboration. It's a series of coincidences. Though,
10 at no point did they ever put forth a credible reason
11 why the detective, why Officer Boccio, why they would
12 lie about a man they never met for a family they only
13 met that day. Defense wants you to ignore and discount
14 the defense's multiple statements of admission.

15 The defense would have you take the
16 defendant's word that he didn't do it. The defendant,
17 the most arguably interested witness in the entire
18 case, the most interested in the outcome of your
19 decision, just take his word as gospel.

20 The evidence simply does not support that
21 leap of faith. There's nothing on the other side of
22 that jump. There's the defendant's empty promises,
23 illogical inferences of a paid expert and character
24 witness who don't know the defendant or is too close to
25 him to actually admit what he has done. It's not

People's summation

1467

1 really a leap of faith at all. In fact, what the
2 defense is asking you to do, is cliff dive into rocky
3 shallows.

4 According to them, nothing really happened.
5 Just some convenient, very convenient, innocent
6 contact between the defendant and Mya's underwear on
7 October 16, 2014. Contact that Mya is either covering
8 up as part of a conspiracy, by defense counsel, with
9 the help of her brother, Sincere, or contact that
10 occurred when Mya's suddenly inexplicably running
11 around half naked from the waist down in a three-room
12 apartment when only the defendant saw her in that state
13 of undress.

14 The defense, although they have no burden,
15 wants you to believe nothing went on in that kitchen
16 between the defendant and six-year-old Mya Ramirez,
17 except he was trying to help her, which is what the
18 evidence has continuously and repeatedly told us. He
19 always seems to do that, just help the Ramirez's over
20 and over again.

21 This time, instead of giving them a ride, he
22 was trying to get Mya's underwear and pants back on
23 her, coincidentally right at the moment when Crystal
24 happened to open the door into the kitchen.

25 Defense would have you believe that because

People's summation

1468

1 he is so helpful, you should ignore that.

2 Even their own expert concedes that the DNA
3 profile inside of this little girl's underwear is a
4 match for the defendant. And because he is so great
5 with kids, not only is it incorrect to draw any
6 conclusions from the measurable amount of male YSTR DNA
7 that was recovered from Mya's vulva swab, we should all
8 close our eyes, close our eyes, ignore, pretend it
9 doesn't exist, that the medical examiner's office, they
10 didn't find the actual amount that they could number,
11 but it does exist and it was there.

12 Finally, defense would ask you on account of
13 the defendant being so generous, so kind, so gentle
14 with children, you should shut your ears as well,
15 ignore Josh Hanson's testimony that those qualities are
16 part and parcel of a sexual perpetrator scheme to groom
17 a victim and their family to insinuate themselves into
18 their life to gain access, to gain trust, to gain
19 opportunity to commit heinous crimes against children.

20 Defense would have you believe it's all a
21 bunch lies and the most coincidence they add, the
22 coincidence that I characterize, as a house of cards,
23 when you add up all of the coincidences, when you see
24 how many have to happen, some of them has a name and
25 it's called guilty.

1 You can't ignore what the defense asked you
2 to do because you took an oath to carefully consider
3 all of the evidence, to follow logical conclusions, to
4 assess each and every witnesses' credibility, including
5 the defendant. You cannot close your eyes, shut your
6 ears. You must look at the sad simple reality of this
7 case. I'm going to stare at you squarely in the eyes
8 and convict him.

9 After going through all of the problems, the
10 holes and incongruences of the defense's case, we will
11 then go back over the People's case and how it
12 nevertheless proves the defendant's guilt beyond a
13 reasonable doubt through separate and independent
14 corroboration of credible testimony.

15 Looking at the defense's case, the defense
16 has no burden, no obligation to put any witnesses, but
17 they chose to do so. They didn't have to, but they
18 did, and therefore, you have to scrutinize and examine
19 all of their witnesses. You must scrutinize, including
20 and especially, the defendant and evaluate the
21 credibility just like you would any of the People's
22 witnesses.

23 The evidence in this case shows you should
24 give no weight first to the character witnesses the
25 defense presented to you. Instead of hinting

People's summation

1470

1 reasonable doubt, the character witnesses in this case
2 either don't prove anything or prove a character trait
3 that should stand for opposite of what the defense
4 wants you to take it to mean.

5 The defense presented to you with three
6 witnesses, the defendant's own son, his
7 daughter-in-law, and onetime family friend who used to
8 date his other son. As far as the defendant's own son,
9 he loves his father and he testified as you would
10 expect.

11 The other two witnesses only have incidental
12 contact, at best, with the defendant and the community
13 in which he lives. They admitted on cross they don't
14 have any basis to have an opinion of the defendant's
15 character, son and daughter-in-law currently live in
16 North Carolina, lived out of the state for nearly a
17 decade.

18 A third witness used to be in no regular
19 contact with the family for years, except for text
20 messages to the defendant's wife on Mother's Day,
21 except for the defendant's daughter-in-law's first
22 Christmas with the family where she is meeting
23 everyone. It's not time you air out the skeletons in
24 the closets, except for that meeting, no dates, no
25 details, no specifics about any of these conversations

1 defense puts before you.

2 And even when you think about those
3 conversations, if you assume they happened, what was
4 community, that was discussing the defendant's
5 character, four to seven adults, the majority of whom
6 was family and the rest were all his friends.

7 Now, we come to character traits itself,
8 kindness and gentleness towards children. Even if you
9 were to assume the defendant possessed such a trait or
10 had such a reputation, the evidence you heard later
11 showed that it proves nothing. It proves nothing at
12 all, or the exact opposite of what the defense wants
13 you to take it to mean.

14 As Josh Hanson testified, you look to sexual
15 perpetrators, being creepy, not having jobs where we
16 have contact with them. That's not reality of how this
17 works. Sexual perpetrators appear upstanding. They
18 are affable, trustworthy. They are kind and gentle to
19 children on the outside. They need opportunities to
20 victimize, and as Mr. Hanson testified to, sexual
21 perpetrators take jobs that give them access to
22 children. Why? Because they want to be left alone and
23 trusted with children. So, therefore, it is actually
24 noteworthy that this defense repeatedly referenced the
25 fact that the defendant worked as a bus driver for

People's summation

1472

1 nearly a dozen years with handicapped children as an
2 Able Ride bus driver for handicapped children.

3 Having such a reputation, building such a
4 reputation, however, despite defense counsel's
5 misrepresentation of Mr. Hanson's testimony, it was
6 never said by him that just having that reputation
7 makes a sexual perpetrator. Mr. Hanson never said, as
8 defense counsel tried to have you go along with, every
9 teacher, pediatrician, everyone in CPS workers, they're
10 all suspect of being sexual perpetrators.

11 Instead, what Mr. Hanson testified to was
12 that the character trait of kindness doesn't exclude
13 you. Because you say I'm nice to kids doesn't mean you
14 are not a sexual perpetrator, which is what the defense
15 wants you to believe.

16 After the character witnesses, the defense
17 went on to a DNA expert. There was testimony from
18 Dr. Reich, a decorated man with a long resume. The
19 majority of his work that he listed for you was outside
20 the forensic genetics. He worked on vision of cats,
21 pathogens living outside of the human body, virtual
22 drug labs, and a variety of pharmaceutical companies,
23 and then he stated forensic genetics. He started a
24 business in forensic genetics, a business of chief
25 scientific officer, a head and leading partner of that

People's summation

1473

1 business, what he called a small little lab, a small
2 little lab that hopes to handle tens of thousands of
3 samples.

4 He might, as defense counsel wants you to
5 believe, be a scientist, and that's also true. He's
6 also a businessman. I want you to be aware of the
7 interest, the skin and game Dr. Reich has. Dr. Reich
8 is not neutral. For these factors, the evidence shows
9 that his overall believability, trustworthiness, and
10 why you should not give part of his testimony any such
11 serious weight is up for grabs and has to go to the
12 analysis of why he is -- recall how difficult he was
13 acknowledging being paid for the testimony. At first
14 he said he was being paid, then his company said he was
15 being compensated, then on cross-examination he had to
16 acknowledge he was the owner of that company. He was
17 bold to say in front of all of you that were his
18 business, were his laboratory to make more money one
19 year to the next. He didn't stand to gain anymore
20 money or business being more profitable. If that is
21 true, it's a very bad business model for such a smart
22 man. He is being paid \$2,500 for testimony, meals,
23 lodging, all in addition to that, and \$250 for eight to
24 ten hours. Consultation is possibly another \$2,500 for
25 two days of work. If you have five days in a work

kmm

People's summation

1474

1 week, assume you work somewhere around forty weeks out
2 of fifty-two weeks. That adds up to \$5,000. That's
3 not a bad business.

4 He never ran a test in this case. Never
5 examined a piece of evidence until he got on the stand.
6 Never been to the examiner's office. He felt free to
7 tell each one of you why they did what they did and why
8 whatever decision made meant. There was not a local
9 expert from Stonybrook, Cold Spring Harbor, the DNA,
10 but a for-profit firm out of Cook County, Illinois.

11 The evidence shows that Dr. Reich definitely
12 has an interest, a monetary interest, a dollar sign
13 interest, and you should weigh that in evaluating his
14 inferences, educated guesses, and scientifically
15 certain conclusions.

16 As I say, remember, recall how Dr. Reich used
17 those three different terms interchangeably, common
18 sense would tell you that is not very scientific in and
19 of itself.

20 So second, about the DNA expert. Almost
21 everything that Dr. Reich testified to agreed with and
22 substantiated Mr. Chillseyzn's work, and the conclusion
23 of the medical examiner's office here in Nassau County.

24 About the defendant's DNA being in Mya's
25 underwear stain 1-A1, the sole male contributor to that

People's summation

1475

1 stain on page 526 of the record, Dr. Reich states the
2 identification of Mr. Ramos is not in dispute.
3 Certainly, the results are consistent with the
4 haplotype of Mr. Ramos' stain. It was agreed that the
5 major YSTR DNA, and also the minor autosomal DNA
6 contributor in the second stain, that they were also
7 consistent with Mr. Ramos' profile. That it was a
8 correct statement to say that he was the contributor.
9 He agreed that the defendant's DNA is in there.

10 Dr. Reich also agreed there was positive
11 indication of saliva on the swab and on both of the
12 stains. He didn't say there were any problems. He
13 found no problems with the way the DNA lab in Nassau
14 County executed all of the tests and found no notes
15 indicating any problems with the equipment.

16 But when he went beyond those concurrent,
17 when their expert chose to disagree with the medical
18 examiner's office, the evidence shows conclusion as
19 inferences and the times he called educated guesses
20 have logical flaws that required you, ladies and
21 gentlemen, to reject them.

22 The Judge will instruct you on expert
23 witnesses' opinions, and statements. They're not
24 sacrosanct. You don't have to accept them. You,
25 ladies and gentlemen, you are the ultimate finders of

People's summation

1476

1 the facts. You have to examine the facts and the other
2 circumstances upon which Dr. Reich made his opinions.
3 The inaccuracy of any assumed facts he used, the
4 reasons given for Dr. Reich's opinion and whether his
5 opinions were consistent or inconsistent with all of
6 the other evidence you have seen in this case.

7 So, when we go to the first inference,
8 examine what does the factor, the majority of DNA on
9 all of the samples, what does that actually mean?

10 Now, their expert witness, their expert
11 witness inferences that the saliva had to come from
12 Mya. It's not based on an actual test. Their expert
13 conceded, his testimony attributed the saliva to Mya
14 based solely upon the fact that she was the majority
15 contributor of all of the DNA and stains and swab.

16 It's first important to note on
17 cross-examination on page 529 of the record, Dr. Reich
18 backed off the certainty and finally acknowledged that
19 this expert testimony was just inference and not a
20 scientific conclusion that the saliva was Mya's in his
21 opinion.

22 Dr. Reich also acknowledged on cross that,
23 quote, nobody can definitively say where saliva comes
24 from. As he stated on cross on that same page, quote,
25 it's not possible using the technique that are

kmm

People's summation

1477

1 available to forensic labs, no, all we can do is make
2 an inference.

3 The next concession defense's expert made of
4 import is that the laboratory's saliva tests with the
5 medical examiner used doesn't quantify the amount of
6 saliva found on the object. Why is that important? It
7 means unknown, unknown how much saliva was either on
8 the swab on Mya's vulva or either of the stains. All
9 we know is that saliva was indicated to be present in
10 all of those locations. Add to it that both the
11 People's expert, Mr. Chillseyzn, and the defense's
12 expert, testified that under normal circumstances DNA
13 is constantly being deposited by our body on the
14 interior of our clothing. Logically, then Mya would
15 have naturally been depositing her genetic material
16 into her underwear she was wearing that day.

17 Recall my hypothetical to the doctor about
18 licking someone's hand and swabbing it hours later. He
19 conceded it would be consistent with such a scenario
20 with the major contributor of the swab of the hand,
21 hours later even though somebody else licked it it
22 would be the owner of the hand and not the person who
23 licked the hand.

24 On page 523 and 525 of the record, the expert
25 also conceded when applied to a vulva, urinating and

People's summation

1478

1 wiping can also substantially reduce the amount of
2 saliva in a saliva born DNA that would be present
3 there.

4 The doctor conceded oral sexual contact, the
5 less saliva would be present and deposited. The less
6 DNA would be found on the location where the licking
7 occurred.

8 All of this testimony is critical for you,
9 whether or not the defense expert was aware of it, the
10 medical records of Mya Ramirez tells you and they are
11 in evidence, ladies and gentlemen, and it informs you
12 of the following two facts. You can look at them. See
13 them on the projector right here. Mya's exam took
14 place at approximately 8:15 p.m. That's not minutes
15 after the door was opened and Crystal screamed. That
16 is not even an hour. That's approximately three hours
17 later when her exam started and then eventually she was
18 swabbed.

19 In addition, it's noted in the medical
20 records that prior to the exam, but after the assault,
21 Mya actually did urinate. She used the bathroom and
22 common sense tells you she wiped. It's noted in the
23 medical records she used the bathroom before she was
24 ever swabbed.

25 MR. BERGER: Objection. Total speculation.

kmm

People's summation

1479

1 THE COURT: All right. The objection is
2 overruled, but just remember, this is argument. You're
3 going to make those determinations. Nothing that the
4 People say is evidence in this case.

5 You may continue.

6 MR. PERRI: Thank you, your Honor.

7 Additionally, there is no testimony,
8 thankfully, that this incident on October 16, 2013, was
9 something that was prolonged. It was interrupted,
10 short. Sincere and Mya testified it happened in a
11 matter of minutes, not hours after the defendant closed
12 the door behind himself and Mya when he went into the
13 kitchen. The evidence proves it's thankfully short.

14 Even the defendant's statements of admission
15 suggest it was momentary contact. Officer Boccio, he
16 licked her once, and the written statement with
17 Detective Baran, it was a tickle game with his mouth,
18 and then Crystal walked right in as it happened.

19 Because of the amount of saliva originally
20 present on either Mya's vulva, because of the
21 considerable time that elapsed between the incident and
22 the swabbing at NUMC during which time Mya urinated and
23 likely wiped herself, because it is consistent with the
24 allegations that the evidence that Mya would provide,
25 the majority of the genetic material on a swab of her

People's summation

1480

1 own vulva, and from cuttings from the underwear that
2 she was wearing that day.

3 And finally, the incident itself was short in
4 duration, you should conclude, based on all of the
5 evidence that Dr. Reich's inference that just because
6 Mya was the major contributor, it is her saliva, it
7 just doesn't make logical sense, and therefore, you
8 should disregard it. It is her clothing. It's her
9 body. The fact that it's mostly DNA doesn't prove it's
10 saliva.

11 Now, about the second inference, the evidence
12 shows that their expert was wholly incorrect and may
13 have attempted to materially mislead the jury as to the
14 presence of male DNA on the vulva swab. The DNA
15 testing in this case and defense counsel's urges, it
16 does not exonerate the defendant.

17 The People have never put forth a witness
18 that says that there was typing identification, or
19 further scientific conclusions made from the YSTR of
20 the vulva swab.

21 The defense's expert attempted to discredit
22 his simple assertion that male DNA, some small amount
23 of it was there on the vulva swab from Mya's genitals,
24 male DNA.

25 First he attempted to suggested that the

People's summation

1481

1 peaks present in the YSTR testing were noise or
2 indistinguishable from the noise, the background, the
3 feed and should be ignored.

4 On cross, defense's counsel expert had to
5 concede that the threshold, the point at which there is
6 no longer noise, where you can actually have allele
7 typing, is a multiple of noise. It's not just a noise
8 level, but a multiple of it and the standards and
9 common multiple, three times larger than noise.

10 Defense's expert also identified for you,
11 what actual noise looks like. Defense counsel's
12 expert, People's 12, noted that this, this test run,
13 that this is what electropherogram of noise actually
14 looks like. It was a good test, he said. This is what
15 noise looks like. When you take page 87 from People's
16 10, along with the one section that was relevant from
17 Defendant's B, and put them next to each other, you can
18 see the marked difference between the two. This is
19 pure noise.

20 Here, ladies and gentlemen, this is what came
21 back from the vulva swab of Mya when they were
22 searching for male DNA. It's not just noise. There
23 are noted and even with untrained eye you can see the
24 noticeable peaks that were present. No one, not
25 Mr. Chillseyzn, none of the People's witnesses said

kmm

People's summation

1482

1 they were able to identify who the source was, but just
2 that some small amount of DNA was there, and
3 Mr. Chillseyzn, and the defense's expert had to concede
4 on cross-examination that there is a difference.
5 There's a difference between actually being able to set
6 up the chart of being able to identify someone and
7 being able to say there is DNA there. And even their
8 own expert conceded in the bench notes an amount was
9 quantified. It was measured. It was there. There was
10 male DNA on Mya's vulva swab that was taken by the
11 nurse on the date of the incident.

12 With respect to defense counsel's attempts to
13 milline the prosecution, in all of the documents of the
14 exact same documents that the People possessed related
15 to the DNA testing in this case. Every square is
16 clearly labeled with the file name and what is being
17 tested, whether it is stain 1-A1, the vulva swabs, or
18 if defense counsel's expert, a scientist in his field
19 was using arms, handgun and a different number for
20 every other one.

21 Additionally, there was no bad faith in
22 providing these documents. They're exactly as they
23 came from the medical examiner's office and every
24 relevant section throughout the entire packet is even
25 highlighted. Whether it's the noise, whether it is the

kmm

People's summation

1483

1 vulva swab, and whether it is the stain. No one was
2 misled, but you expect a paid expert to be able to
3 read.

4 Finally, there is the issue what is in the
5 report according to their expert. Defense counsel's
6 expert made a big deal on page 7 of February 27, 2013,
7 report there was no mention of YSTR findings. On
8 cross-examination he had to concede yet again that it
9 was mentioned, that what he said wasn't the whole
10 truth. That on page 2 of the same report, YSTR typing
11 was explained, and he had to concede that as just
12 Mr. Chillseyzn testified to, it was there, but it could
13 not be used to identify who deposited it there.

14 So much like the character witnesses, all of
15 the defense's experts, the testimony fails to question
16 any evidence. His inference that Mya was the source of
17 the saliva doesn't stand up to your own logic and the
18 facts YSTR DNA was present, was measured, was found,
19 and he conceded that there was an amount determined,
20 not just identified on her vulva, corroborates what Mya
21 told you and shows that her testimony is to be
22 believed.

23 Next you have the defendant. The defendant
24 has no burden, didn't have to take the stand. If he
25 didn't, you can't use it against him. But he did. So,

kmm

People's summation

1484

1 I ask you to use it against him. Use every word he
2 said to you against him. He chose to testify. He had
3 the right to remain silent. He waived it here just as
4 he did in dealing with the detectives on October 16,
5 2013.

6 The judge will instruct you and I will
7 reiterate it again. As a matter of law, the defendant
8 who testifies is a person who has an interest in the
9 outcome of this case. You have to be conscious of that
10 reality when you examine and weigh the defendant's
11 credibility, the reasonableness or the not
12 reasonableness of what the defendant says to you. Do
13 you believe it? Is it consistent with the rest of the
14 testimony and evidence before you?

15 Let's examine three relevant portions of the
16 defendant's testimony. First, the defendant's
17 background, his previous relationship with Crystal.
18 Second, the defendant's version of what happened on
19 October 16th. And finally, the defendant's version
20 about what happened afterwards while he was in police
21 custody.

22 Looking at the background information about
23 Crystal. A family man, working full time, working all
24 of the time, picking up extra shifts, he's an American
25 citizen. Defense counsel elicited in starting the

People's summation

1485

1 examination of the defendant, he became an American
2 citizen, not a permanent resident. He became an
3 American citizen. Common sense and basic civic
4 knowledge dictates that this entailed him taking the
5 naturalization test which commonly is known.

6 MR. BERGER: Objection. This is such
7 speculation, not anything near what the evidence in
8 this case is about.

9 THE COURT: All right. Again, nothing that
10 either attorney says is evidence in this case. I'm
11 going to allow this at the moment and see if it goes
12 too far.

13 MR. PERRI: Yes, your Honor.

14 Common sense and basic civic knowledge
15 dictates that this entailed him taking the
16 naturalization test which has basic civic portion and
17 basic English literacy test. He was an MTA employee, a
18 NICE bus operator. On cross he told you that he
19 received a written job offer in English. He filled out
20 a log each day in English. That he forms and other
21 papers at his job, all in English, and yet, interacted
22 with his customers in English. Whether or not more
23 comfortable in Spanish, is a not relevant question for
24 you, but the evidence definitely shows that this
25 defendant read and spoke English both today and before

People's summation

1486

1 he was incarcerated. The defendant even corrected the
2 interpreter while he was testifying about the accuracy
3 of her interpreting of what he said. This isn't a
4 language -- English isn't a language he picked up and
5 brushed up on while he was incarcerated.

6 Now, about his relationship with Crystal.
7 He's not her father, he's not her uncle, he's not her
8 cousin, not her brother, not even her stepbrother.
9 He's the father of her ex-boyfriend's father of the
10 children's friend. That's not exactly family. It's
11 not normally a close relationship that you have. Would
12 you do everything that he says he was doing for the
13 Ramirez's if that was your only connection with them.
14 I don't think so. It's not reasonable for you to
15 believe that he was doing so.

16 According, to the defendant, he and Crystal
17 were not sleeping together. They weren't dating, and
18 he provided unlimited transportation for them. He
19 would take them anywhere they needed to go. He would
20 provide free babysitting services whenever Crystal
21 wanted it. He would pick them up, drop them off, do
22 whatever they needed.

23 He was also concerned about Crystal's
24 smoking, concerned about her drinking and thinks she is
25 a bad parent. He never called 911. He didn't tell you

kmm

People's summation

1487

1 he called CPS. What, according to him, did he do in
2 response to those concerns? He brings over liquor. He
3 brings her cigarettes. He brings them to her and
4 provides her an opportunity so she can stay out at
5 night so he could stay home and watch her kids. He
6 acknowledges that night at Crystal's her kids do not
7 speak Spanish, always interacted in English. He claims
8 he did their homework in English. He's just a nice
9 guy. Someone has to do their homework, because as he
10 would have you believe, Crystal is just drinking the
11 alcohol he provides and smoking the cigarettes he
12 brings over, instead of caring for her own kids.

13 Don't think too hard about it, ladies and
14 gentlemen, then would you have questions. Just go
15 along with what the defendant says to you, because the
16 evidence shows the defendant's description of his
17 relationship with Crystal, it just doesn't make any
18 sense that this is how he was living his life. It
19 screams for you to ask what was he getting out of this.

20 His role as what he would tell you is
21 Crystal's doormat. Crystal, according to the
22 defendant, according to him, is a selfish person that
23 takes advantage, but he keeps coming back. What does
24 he keep coming back for? The evidence gives you the
25 answer. He keeps coming back for access to Mya. He's

kmm

People's summation

1488

1 not helping them. He's helping himself to a
2 six-year-old girl who wouldn't tell, who couldn't fight
3 back, whose mother would otherwise be occupied because
4 he let her go out at night when he could be alone with
5 him.

6 Then he admits he gets time alone with the
7 children. On more than one occasion he corroborates
8 both Mya and Crystal's testimony that that was going
9 on. And according to the defendant, there was no bad
10 blood between them whatsoever, not at all, nothing bad
11 before October 16, 2013. They got along. She depended
12 upon him. He liked the kids. The kids liked him, and
13 this evidence is that this defendant offered you on
14 direct and cross-examination just further goes to show
15 that Crystal, Mya, Sincere, they have no motive to lie.
16 They have no reason to make this up. No ax to grind,
17 no vendetta, and through that lens, the evidence
18 demands you use, examine the defendant's version of
19 October 16, 2013, the date of the incident itself.

20 What did he tell you happened that day? The
21 evidence shows that the defendant's own version of the
22 incident is incredible and unreasonable. An
23 interesting point to note is that the defendant just
24 asked in his written statement to Detective Baran,
25 repeatedly on the stand, used the term a little girl,

People's summation

1489

1 instead of Mya's actual name. Just like in the
2 statement, he doesn't call her Mya, he calls her little
3 girl.

4 The defendant's version of October 16th
5 starts on direct with a rather bizarre exchange. He
6 claims Mya is in the yard trying to get him to play
7 with her, page 574, he has to go inside to do her
8 homework.

9 According to the defendant, he then takes a
10 break from drinking with Crystal and then goes back to
11 drinking, which is weird, because according to him he
12 doesn't drink, but he was drinking that day.

13 On page 575, suddenly Mya is naked or wearing
14 a shirt. The defendant seems confused and describes he
15 goes back and forth between the two. First she had a
16 shirt on. Then when questioned by defense counsel on
17 page 576 of the record, she did not have her clothes
18 on. She was holding her clothes in her hand.

19 Please note, the defendant on page 576
20 provided the next details of his story, not on his own,
21 but only after defense counsel reminded him of them
22 with leading questions one after the next.

23 Question, you walked into the bathroom; is
24 that correct?

25 Answer, I went in. I closed the door.

People's summation

1490

1 Question, before you went in, did you say
2 anything to Mya?

3 Answer, I told her to put on her clothes.

4 Question, did she try to follow you into the
5 bathroom?

6 Answer, yes.

7 Now, these two pages of testimony are central
8 to the defense. Yet, there is no flow, no fluidity,
9 and there's no recall unless the defendant prompted to
10 give me the information as the defense attorney is
11 asking for true leading questions. He's not a child.
12 He's an adult.. He's a United States citizen, a
13 unionized bus driver. The evidence suggests and the
14 testimony that comes out the way the defendant provided
15 for you there has to be spoon fed to you through him.
16 The details only come out through questions, that's not
17 credible. That's not natural. That's not how people
18 recall events if they are true.

19 Then the defendant's version becomes even
20 more peculiar. When he comes out of the bathroom,
21 according to the defendant, from his perspective, the
22 child, she is just there. She is just naked, waiting
23 for him. He sees it. It is page 577 of the record, he
24 says, she is there, standing in the kitchen with her
25 clothes in her little hands.

People's summation

1491

1 First, I want to remind you Sincere never saw
2 Mya naked. He was with Mya. Mya was playing in the
3 house, running all around, playing outside, going
4 inside, but Sincere never saw her naked. Suddenly she
5 is naked, along with the defendant.

6 It's a three-room apartment. According to
7 Sincere she already had her pajamas on when the
8 defendant took her into the kitchen and closed the
9 door. She didn't have to put her pajamas on, as the
10 defendant is telling you she did.

11 Then I think it's beyond the pale, it's
12 unreasonable that when he sees Mya, according to him,
13 standing there naked, holding her clothes and looking
14 up at him trying to force her way into the bathroom
15 with him.

16 That in that situation, instead of going
17 outside, instead of getting Crystal, instead of finding
18 the child's mother, the defendant instead, does what?
19 He takes the clothes out of her hand, has her get onto
20 the floor of the kitchen so that he can then get down
21 with her and put her underwear and her pants on
22 himself.

23 He's not her father. He's not even her
24 uncle, he's not her cousin. This man, who is just
25 inexplicably involved in their family decides the

People's summation

1492

1 reasonable thing to do in this situation is to get down
2 there with her, the naked child, on the floor of the
3 kitchen and dress her himself. There's an awkwardness
4 about his testimony, all about this whole situation.

5 The manner in which only the defendant was
6 able to describe putting on the pajama pants. Puts
7 them onto Mya and then the underwear, led through every
8 detail, step by step.

9 Further evidence, the defendant is not
10 credible. Then suddenly, on page 577, asked an open
11 ended question, what happened next?

12 The defendant then says, he stood up to put
13 on her shorts, clothes, no one ever saw Mya wearing,
14 and then Mya had to stand up because I did not want to
15 touch her anymore because of her mom.

16 Even in his own version, he stops just short
17 of a criminal act, not because he felt this was awkward
18 or unwanted to be there naked, be there with a naked
19 six-year old.

20 The defendant confesses that he was mostly
21 worried about getting caught by Crystal all throughout
22 the process.

23 Now, according to the defendant's version, he
24 is down on the floor, Mya is standing up, getting her
25 pants and underwear up at the same time. Not,

1 underwear first, then pants. I don't know about you,
2 as the defendant described it, she first gets through
3 his help her underwear to her knees. Then he gets her
4 pajamas pants to her knees, and then she is supposed to
5 get the pants and the underwear up together at the end.
6 That's when he let her take the reigns, and do it
7 herself. It's not a reasonable way that you, yourself,
8 would get dressed.

9 The defendant then added the fact that he
10 stood up and he moved away, that's how Crystal found
11 him. It's just coincidence. This one more level of
12 coincidence that Crystal happen to open the door just
13 as Mya, according to the defendant, was left with her
14 clothes at her knees, about to pull them up, and he is
15 standing one step behind her.

16 But even Crystal, even Sincere said the
17 clothes weren't at her knees. Both of them testified
18 to you that the pants and underwear were down on the
19 ground. No one was dressing Mya that day. Someone was
20 undressing her.

21 After all the coincidences, the defendant
22 adds the par-for-the-course endnote, once he was chased
23 out of the apartment, you should consider in finding
24 him credible or not.

25 Mya, according to him, was silent throughout

1 the whole process in the kitchen, just a naked silent
2 child, whom he had to dress on the floor.

3 Mya opened up a window after the defendant
4 fled outside. She opened a window and she was talking
5 with him. The defendant got out of there, who told you
6 she is deathly afraid, she is so scared, that
7 everything exploded inside the house. He does
8 describe her scared. He didn't tell you she is freaked
9 out, she's crying, or worried at all.

10 And his first words to her are just, did your
11 mom call the police? Then he gives you what he says is
12 her response. It's not how a six-year old talks. It's
13 not how a child refers to her parents. The defendant's
14 version, with the very mature comment, you know my mom,
15 you know how she is. She was a six-year old then.

16 The defendant may believe this helps him.
17 Common sense tells you that it is not a response of
18 what a six-year old would do. According to him, stuck
19 in the middle of an intense volatile situation where
20 she was the focus of her mother's anger.

21 Ladies and gentleman, the Judge will instruct
22 you, if you find any witness, including the defendant,
23 has intentionally falsely testified as a material fact,
24 you can disregard all of that witness's testimony.

25 The evidence shows the defendant's narrative

People's summation

1495

1 is disjointed and haphazardly attempts to cobble
2 together an innocent excuse as to why the defendant's
3 DNA got into Mya's underwear, because he had to touch
4 her to dress her.

5 I would hardly call the defendant that sat
6 there and told you -- I wouldn't call that completely
7 innocent, even on its face.

8 A father of a friend of the ex-boyfriend's
9 father of the children just doesn't take it upon
10 himself to put clothes on a naked female first grader.
11 She wasn't a baby. She wasn't even a toddler. Mya was
12 six years old. A male teacher of her would never do
13 what this defendant says he felt he just had to do in
14 that situation.

15 And also, remember, this all happened behind
16 closed doors. The kitchen door is closed. Crystal
17 herself had to open the door to walk in. It just
18 happened to be a closed door. She just happened to be
19 in there alone. She just happens to have all of her
20 clothes off. Coincidence, after coincidence, that
21 don't scan.

22 Secondly, the whole process the defendant
23 describes takes too long. The defendant's version is
24 tortured, and none of the references in fearing of
25 getting caught with Mya naked makes sense unless he is

kmm

1 worried what he was doing was wrong.

2 Third, it does not explain how any of the
3 saliva got into Mya's underwear onto her vulva. There
4 is no testimony in the record of Mya or the defendant
5 drooling. There is no testimony that either of them
6 are spitting, licking their hands, sneezing, or
7 coughing, as defense counsel invites you to speculate.
8 Yet there is saliva in the six-year old girl's
9 underwear and on her vulva.

10 And the defendant's story is not finally
11 corroborated by Sincere. It is much simpler, rational,
12 less-prompted testimony than this adult's testimony.
13 That Mya complained of a toothache. She was fully
14 clothed in her pajama pants, and the defendant took her
15 into the kitchen and closed the door.

16 The defendant's version of the incident,
17 according to the totality of the evidence, is not
18 credible and should be disregarded in its entirety.

19 After this, the defendant moves on to talking
20 about what happens with the statements of admission.
21 They claimed that he did not say anything to Officer
22 Boccio. He corroborated that he spoke with Officer
23 Boccio, but never threatened, the defendant was never
24 coerced, never promised anything and never met Officer
25 Boccio before that day. They never admitted to saying

People's summation

1497

1 anything to Officer Boccio about licking Mya and
2 offered no explanation as to how Officer Boccio could
3 then be so confused, or why he would decide to
4 completely testify falsely about their interactions.

5 The defendant is, therefore, requiring you to
6 trust the defendant and find Officer Boccio lied on the
7 stand, to get the defendant, and a man he doesn't know.
8 Common sense tells you that is not reasonable.

9 But in scrutinizing the defendant's
10 testimony, realize that the defendant cannot admit to
11 you what he said to Officer Boccio, because that then
12 ties him to the saliva.

13 The saliva indicated to be present on Mya's
14 vulva, in her underwear, and when the defendant's
15 tortured version of events tries to give you excuses as
16 to why it is there, since they can't explain it, they
17 need you to ignore it and just move on.

18 The next phase of the defendant's portion of
19 testimony relates to how he dealt with Detectives Baran
20 and Pacheco.

21 Before you take any stock of the defendant's
22 credibility when testifying about the detectives,
23 please recall that, according to his own words on
24 cross-examination, the defendant thought he'd go to the
25 special victims squad, there in the arrest room, in

People's summation

1498

1 custody for hours, this was no big deal. It wasn't
2 serious, according to the defendant, and he came
3 willingly to the special victims squad. But by
4 willingly, he quickly had to admit on cross that
5 willingly, he was immediately in handcuffs in the back
6 of the police car. Other than the concession, the
7 defendant did not budge on it being no big deal. He
8 did not think it was a big deal. It was not serious
9 when he was in the arrest room. He was cuffed, in
10 custody for hours, accused by Crystal of having oral
11 sex with a six-year-old girl, and he believed it wasn't
12 serious.

13 Ladies and gentlemen, maybe that's actually
14 true. Maybe that is what he believes. The evidence,
15 after all of the facts shows, he thought he could just
16 maybe say, I'm sorry, and Crystal would drop the
17 charges. Maybe he thought it was okay. Maybe he
18 thought this wasn't a big deal.

19 That being said, let's talk about the rights
20 card that happened immediately during this whole not
21 serious interaction with the police.

22 The rights card, the document in Spanish with
23 which the defendant testified to, that he recognized
24 it. He saw it, the signatures, the words he wrote, and
25 he proved on the stand that he was able to read it. He

People's summation

1499

1 read it in Spanish, in his native language. He
2 testified to it being placed in front of him, and he
3 would have you believe that, although, he looked at in
4 Spanish, he never read a word on it.

5 According to the defendant, he was ordered to
6 sign it, and that's what he does, he signs whatever is
7 put in front of him. He wrote the word si, and yes
8 twice, and signed it three times. He acknowledged the
9 signature, but claims no one ever read him any part to
10 him, and he didn't read any part of it either. He had
11 no idea, according to him, what the card meant, but
12 acknowledged. And you can see it, that in bold, at the
13 very top of the card in Spanish, it says that the
14 notification about his rights prior to interrogation.
15 Translation is on the back. You can look at it
16 yourself. They're right by where he wrote the word si.
17 It says, comprende. Do you understand? He signs his
18 name, not once, not twice, but three times.

19 All over the card, while it's in his
20 possession, he says he looked at it, but the letters
21 didn't become words and the word didn't mean anything
22 to him. That's what he wants you to believe happened
23 when he was given the rights card.

24 It is common sense and human experience tells
25 you that is not even possible. That when you see

People's summation

1500

1 letters, you form words. Once you know how to do that,
2 you are able to read, you see words, you can look at
3 words and never process, that just doesn't make sense.

4 On page 633 of the record, the defendant
5 acknowledges -- once again, that he's not being
6 threatened, he was never coerced, never promised
7 anything. And yet, he does just this because they ask.
8 Because they say sign it and write the word si. He
9 does this while in custody, after having being accused
10 of having sex with a six-year old. He wasn't intimidated
11 because it wasn't a big deal.

12 And the pattern of unreasonableness by the
13 defendant continues in the statement.

14 The defendant acknowledges on page 620 of the
15 record, Detective Baran's questioning didn't start
16 until after he signed this card, which is weird.
17 Because if, according to the defendant, all of the
18 detectives are lying all of the time, he then
19 acknowledges, although, they lie, they all still do
20 everything in the right order. They have the rights
21 card signed first and then speak with him, but the
22 defendant wants you to believe he has no idea what the
23 document meant. Although, all of the conversation
24 about this case didn't occur until after he signed it.

25 The defendant on direct testified that with

People's summation

1501

1 the statement he continued to signing it. He signs it
2 multiple times, just like the rights card, and he has
3 no explanation as to why he did it. Defense counsel
4 when he gave you his closing statement, didn't give any
5 further light to that. There was no reason given why
6 this defendant just gets told to sign something when he
7 is in police custody and just does it.

8 The defendant doesn't tell you he kept
9 signing because he was scared, or he thought they let
10 him go if he signed it. There is no evidence in the
11 record of threats, or tricks, or promises. He just
12 signs page after page, document after document for no
13 reason at all.

14 On direct on page 586 of the record this
15 defendant claims he had no idea what People's 10, the
16 statement of admission, he had no idea what this
17 document was when he signed it.

18 Still on direct the defendant hedges his bets
19 at the direction, once again, after more leading
20 questions.

21 On page 587, question, you told us yesterday
22 that you didn't read English too well, correct?

23 Answer, during that time I did not read it
24 that much, but now I have taken good use of that time
25 while I have been detained.

People's summation

1502

1 Question, you mean for the last nineteen
2 months you have improved your ability to read English?

3 Answer, yes.

4 Question, but did you ever read the statement
5 back on the 16th of October, 2013?

6 Answer, I tried to read it, is the answer,
7 but I did not understand it too well.

8 Originally, he had no idea what it was
9 whatsoever, because by the time he led through it, now
10 he's hedging his bets that he tried.

11 Then on cross on page 621, the defendant is
12 forced to acknowledge that on the very top of the
13 statement, the written statement of Daniel Ramos, it
14 was not hidden from him what this document was that was
15 put in front of him. Right below that title of the
16 document is the correction that he made, that he told
17 Detective Baran about. That his Social Security number
18 was wrong, and where -- and in many other places he
19 initialed the corrections that he asked Detective
20 Baran, who does not speak Spanish, who took the
21 statement in English, that he initialed after telling
22 that correction to Detective Baran; right before the
23 title, the statement of Daniel Ramos.

24 The defendant says he has no idea what the
25 document was. He acknowledged that he put his initials

People's summation

1503

1 not just there, but also next to the other correction
2 that he made on this document. Down, towards the
3 bottom of the document, you can examine when you are
4 deliberating directly, the defendant noted that the
5 English sentence didn't make sense. He said this on
6 cross-examination. It corroborates what Detective
7 Baran said, the defendant pointed this out himself,
8 that this sentence was missing the noun girl. I went
9 inside the house and missing the word girl, added by
10 the direction of the defendant. It was initialed by
11 the defendant, was following me as I went into the
12 bathroom. This is less than an inch. It's almost just
13 a half an inch from the one sentence of that that the
14 defendant says he didn't know was on that page.

15 We know that he read at least to hear in
16 English, he noted this word was missing. But then
17 somehow, although he signs just below the same section,
18 somehow, the one sentence where he pulls down her pants
19 and tickled her pussy with his mouth, that is one
20 sentence he missed in this entire document. He
21 initialed the correction before it, he signed it
22 immediately after it, but that's the one sentence,
23 although, everything else before it was correct, and
24 that's the one sentence he never saw.

25 The defendant would have you believe

People's summation

1504

1 Detective Pacheco never translated not one bit of this
2 document or that he translated the document and then
3 missed that one section. It was part of a conspiracy.
4 Although, the only evidence of that before that is his
5 own testimony.

6 Detective Pacheco wasn't even assigned to
7 this case. He went out of the room and went back to
8 his own room. He never met Daniel Ramos before that
9 day. He didn't know Crystal, or Mya, or Sincere. He
10 doesn't know these people. It's not his case. So why
11 would he risk his entire career? You have to ask that
12 question. Although, defense counsel keeps saying
13 don't. Why would he risk it all for not even his own
14 case? He would just happen to walk in, translate, walk
15 out, now he will fabricate all of this testimony. The
16 defendant never actually gives you an answer from the
17 evidence to those relevant questions. The negative
18 assumptions that the defense keeps asking you to make
19 about the detectives' credibility is unreal.

20 Finally, we have the apology letter. The
21 defendant testified that he wrote the apology letter to
22 Crystal apologizing to her for her actions and for her
23 feelings, how she felt.

24 Page 632 on cross-examination the defendant
25 acknowledges he does not say that at all anywhere in

1 this document. In this handwritten apology letter,
2 there's nothing in there about, I'm sorry, you are
3 upset Crystal, or I'm sorry, you kicked me out of the
4 house, or I'm sorry, you did anything. Instead, what
5 is in there, he asks for a thousand pardons. He says
6 he is sorry for what happened. That he never intended
7 to harm anyone, let alone the kids. That he never, and
8 then he repeatedly asked Crystal to drop the charges.
9 The defendant agreed this translation, the translation
10 by Detective Pacheco was accurate. That was the
11 substance of his letter that is addressed to Crystal
12 and Mya. That's what is addressed to, not the entire
13 family, but to Crystal and Mya, the mother and the
14 victim.

15 What are we left with? The defendant is not
16 even curious about what he is signing. He just signed
17 because it was there, ignores the titles of every
18 document, and he tells you unrealistic reasons why he
19 wrote other things, the apology letter specifically
20 right here.

21 Nowhere in there does he claim he was
22 innocent. Nowhere in that letter does he say that it
23 was no big deal. He asked for a thousand pardons.
24 Again, here, as with all of the defendant's version of
25 events surrounding admissions, the evidence shows that

People's summation

1506

1 his testimony is irrational, it is disjointed, and it
2 cannot be reconciled with all of the other evidence and
3 testimony in this case.

4 Although, I tried to work in a lot of my
5 criticisms of the defense's case by my arguments about
6 why the People independently have met our burden,
7 because that burden is our burden and ours alone. I
8 want now to go back over the People's case and fill in
9 the other gaps we haven't gone over yet and explain to
10 you why the evidence present in this case corroborates
11 that testimony and shows you why the defendant is
12 guilty beyond a reasonable doubt.

13 First, there is the Ramirez family testimony.
14 Then initially think about what the evidence has shown
15 you about Crystal, Sincere, Mya's group, nothing to
16 gain about their testimony, they had no opportunity to
17 fabricate the moment Crystal walked into that room, the
18 moment after she heard her daughter say he licked my
19 coochie, she is on the phone giving the same consistent
20 testimony as she did here. She is saying the same
21 thing that her daughter told her that it happened.

22 The testimony is factually specific and
23 limited. Their effects, the way they have their
24 demeanor, their emotional state. I tell you they are
25 real and appropriate where each of them is and what age

People's summation

1507

1 they are and where they come from.

2 First Crystal, then herself corroborates most
3 of the sum and substance, everything you learned from
4 her about their relationship and none of it supports
5 finding the defendant not guilty.

6 Instead, he collectively tells you he had
7 repeated access, ample opportunity to commit the crime,
8 and he was intimately involved in this family's life.

9 On direct and cross you learned the defendant
10 made himself indispensable, a single mother, raising
11 two kids on her own, who doesn't have a car. Neither
12 side disputes that he took her to the beach, took them
13 to a BBQ, took them out to the bus races, out to run
14 errands and drove her all over Nassau County and into
15 Suffolk.

16 The entire record of this trial, the People
17 and defense's case contains no evidence. No evidence
18 of anything negative taking place between the defendant
19 and Crystal before October 16th. There was no falling
20 out, there is no argument, there is no motive for her
21 to lie or to jump to a conclusion defense counsel wants
22 you to believe.

23 The defendant provided her with essential
24 services, babysitting, transportation. In all that
25 happened by her following through on this case, on her

People's summation

1508

1 calling 911, on her backing up the daughter, she lost
2 out on all of that. Her life is more difficult because
3 she followed through on this case.

4 If Crystal had not seen what she saw on
5 October 16th, 2013, if Mya had not said what she said,
6 that the defendant had licked her coochie and pointed
7 at him there, there would have been no reason for
8 Crystal to invent this story against a man who had been
9 nothing but too nice to her throughout their entire
10 relationship.

11 Defense counsel, during cross of Crystal, of
12 both of the children, he stood here in front of you and
13 gave a summation to make Crystal to seem crass, to make
14 Crystal to seem uneducated. So I say to that, so what.
15 Even if she is, so what. She is not on trial. Defense
16 counsel actually said himself multiple times, the
17 People's witnesses are not on trial, the defendant is.
18 Defense counsel wants you instead to focus on the words
19 she used, like eat, coochie, pecker, and whether she
20 uses corporal punishment on Mya, claims she's a bad
21 mother and ignore all of evidence of guilt, whether you
22 like it or not, whether you agree with disciplining her
23 child with a belt.

24 Remember the reason we are here. We're here
25 today, in this courtroom, because the evidence shows

kmm

1 that on October 16th, 2013, for all her faults, her
2 limitations, when she opened that door, when Crystal
3 saw her daughter, she first and foremost was her
4 child's mom, a protector, a defender.

5 Defense counsel portrays and the evidence
6 clearly shows it was an appropriate reaction. She
7 found her daughter alone with this defendant in the
8 kitchen, alone with her pants and underwear down on the
9 floor. She didn't ignore it. She wasn't oblivious to
10 it. She didn't try to explain it away so she could
11 keep accepting the defendant's favors and benefits that
12 her friendship with the defendant brought her life, but
13 even then she didn't irrationally then fly off the
14 handle. She didn't commit any act of violence. She
15 didn't do anything violent, in fact, at all. She
16 understandably shouted what the F is going on here.
17 She didn't use the F word. That gut reaction, the
18 evidence in itself that she was genuinely disturbed by
19 what she saw.

20 Not until her daughter pointed at this
21 defendant, pointed at him like she did in the
22 courtroom, pointed him out and told her that he licked
23 her coochie, that's when she grabbed her child,
24 screamed at the defendant to get out and locked him out
25 of her home. Before there was a moment to fabricate,

People's summation

1510

1 before Crystal could come up with a story, before she
2 could invent a story, before she could concoct lies,
3 she immediately called the police and called 911 and
4 told them factually what had happened, nothing more,
5 nothing less. Her daughter told her the defendant had
6 oral sex with her. Whether you believe Crystal said
7 licked or ate to the 911 operator, it is still
8 consistent. It means the same thing. It shows, again,
9 Crystal, acting in that moment. She wasn't thinking
10 how it will look nineteen months later at trial to get
11 the police to her home as soon as she could. Whatever
12 words she used, her concern was getting the defendant
13 away from her daughter who was guilty of molesting her.

14 The defense would like you to believe Crystal
15 made this up, that she would tell the police a lie, she
16 would drag her daughter to the hospital, have her
17 undergo a rape exam, as a six-year old or Mya's words
18 to Nurse McAllister, put Q-tips into her coochie to see
19 if it was good or bad, to keep the lie going, to keep
20 her jumping to conclusions going.

21 Crystal then recruited both her daughter and
22 her son to testify here in front of all of you, in
23 front of an audience, and she would allow her children
24 to be cross-examined all for nothing, except to get
25 back at this defendant. The evidence tells you this

People's summation

1511

1 does not make sense. It does not make sense unless
2 Crystal saw what she saw, and then did what he did, he
3 placed his mouth on Mya's vagina.

4 If we were even to assume defense counsel's
5 position, what he wants you to believe, Crystal is
6 making it up, assuming the words, can't tell truth from
7 fiction or whatever, wouldn't Crystal make her
8 testimony a little more damaging? Wouldn't she make it
9 worse if she could make it up? Wouldn't she have come
10 in here and really tried to get the defendant to come
11 in here and told you, exaggerating it, fudging it,
12 helping the case, and come in here and say, I walked
13 into the room with the defendant's face between my
14 daughter's legs. She didn't do that. She didn't
15 exaggerate. She didn't make things up. Why not say
16 she walked in on the act itself? Would it make things
17 worse for the defendant? Instead, she testified to
18 what she knew, and saw, and she didn't speculate. She
19 didn't testify in a manner that shows -- it showed
20 anything but honest, according to all of the evidence
21 submitted to you.

22 She saw the defendant was alone in the
23 kitchen with her daughter. She saw the defendant
24 standing behind her daughter looking guilty, caught in
25 the act, rubbing the brow of his head. She saw the

People's summation

1512

1 defendant immediately adjacent to Mya's underwear and
2 pants that were down on the ground. This defendant,
3 whom her daughter pointed to and said he licked my
4 coochie. The defendant offered to you nothing but
5 speculation, you should not credit Crystal's testimony
6 and not depend on just that.

7 He's an imperfect human being, like all of
8 us. The evidence shows on October 16th, she was her
9 kid's mom, she did the right thing, and you should
10 credit her testimony. It's internally consistent and
11 it is limited and, most importantly, it corroborates.

12 Next, Sincere, her older child, her only son,
13 Mya's brother, a fifth grader who understood the oath,
14 that it was a promise to tell the truth. Who knew if
15 he did not tell the truth, he was not going to leave
16 here.

17 On October 16th, 2013, he came home from
18 school to find the defendant already in the house with
19 his mom, Mya, his sister home also, in her pajamas.
20 Sincere was playing his Playstation 3 in his mom's room
21 between the porch and the kitchen, and Mya was all over
22 the apartment playing with her toys, not naked.

23 Then Sincere saw the defendant come into the
24 living room, take his little sister, Mya, complaining
25 of a toothache, took her into the kitchen and closed

People's summation

1513

1 the door.

2 The evidence shows in Sincere's testimony on
3 direct and cross-examination it corroborates his
4 mother's and Mya's testimony, but it corroborates it
5 from an eleven-year old perspective. He explained to
6 you his mom came in from the porch, that she went from
7 the first room into the second room, into the kitchen,
8 that the kitchen door was closed, because the defendant
9 closed that door.

10 Sincere explained to you how his mom found
11 the defendant in there alone. Sincere heard his mother
12 scream and yell, what the F is going on? Then he saw
13 his sister Mya in the kitchen with her pants on the
14 ground. He heard his mother continue to scream, she
15 grabbed Mya and moved to a bed just as Crystal told
16 you. He watched as his mother got the defendant out of
17 the apartment, locked the door, called the police and
18 asked Mya about what happened.

19 But Sincere is the boy that no one seemed to
20 notice that day or bothered with at the scene, with
21 whom no police officer, detective, spoke to that day.
22 He remembered something separate from everyone else, he
23 heard the defendant admit he did it. Sincere
24 acknowledges the defendant repeatedly denied doing it
25 as Crystal told him to get out of the apartment.

1 You also heard the defendant tell, Mya's
2 lying, Crystal recalled as well. No one is disputing
3 that was also said. You also heard the defendant
4 saying, it wasn't what it seemed to be.

5 Back on October 16th, 2013, as Crystal was
6 talking to Mya, as she calling the police, as she was
7 distracted, more so then Sincere, he heard something
8 else. He heard the defendant change tactics possibly
9 out of desperation. Sincere heard the defendant admit
10 that he did it. On cross the defense pushed Sincere on
11 this point and Sincere never faltered it, but it didn't
12 matter that he heard what he heard. The evidence shows
13 he was being truthful, just like Crystal, he
14 acknowledged to the defense, he did not see the
15 defendant do what he did to Mya. He even noted to
16 defense counsel, how could I if the door was closed?
17 He also acknowledged he did not tell the police. No
18 one even asked him, no one spoke with him about it; a
19 fact that it is corroborated by every other witness
20 testified at this trial.

21 Remember, Sincere is eleven years old, fifth
22 grade. You evaluate how his testimony came out. The
23 evidence shows that it wasn't rehearsed, it wasn't
24 sanitized. Defense counsel keeps trying to say about
25 the children. It wasn't vengeful either. What it was,

People's summation

1515

1 it was painful. It was painful to watch and it was
2 painful for Sincere to go through; talk about his
3 sister's genitals, and this defendant had oral sexual
4 contact with his little sister.

5 You have a child taking an oath, standing up,
6 promising to tell the truth here, still in a foreign
7 adult place, speaking about very adult topics and being
8 questioned. Would you expect Sincere or Mya to
9 understand why they get questioned the same question
10 over and over and over again by defense counsel? If
11 Sincere was able to answer the vast majority of the
12 questions, despite the pain and sometimes it was
13 awkward when he was up there. He was able to do it up
14 until the moment when defense counsel finally pushed
15 him too far and pushed him to tears.

16 This youngster, defense counsel called him,
17 he was pushed to tears not being questioned on what
18 happened on October 16th, 2013, not on the statement he
19 heard from the defendant. When did Sincere break down?
20 When did he shut down? He shut down on a line of
21 questioning unrelated to what the defendant did, or
22 what he saw on October 16th.

23 The defense broke Sincere only when they
24 moved suddenly from asking specific details about that
25 day his sister -- whether she was molested to whether

People's summation

1516

1 Sincere ever watched pornography, movies with naked
2 people in it. That's when Sincere shut down.

3 Defense counsel asked irrelevant questions in
4 front of all of you in public, while Sincere sat there
5 on the stand and that's why he cried. He cried,
6 because unlike the defendant, he knows this is all
7 extremely serious. All of this is horrifying and
8 mortifying, and all of this is confusing also. After
9 answering dozens of pointed questions, after answering
10 them consistently, to the best of his young ability,
11 defense counsel shifts gears and asks the
12 eleven-year-old boy whether or not he had been watching
13 naked movies on his mother's television in her room.
14 The evidence shows you Sincere, it shows internal
15 consistency and that should be credited, and his
16 testimony only adds further clarity to the simple
17 painful reality that his sister was victimized in their
18 home, there in Nassau County, on October 16, 2013.

19 Finally, we have Mya. About Mya, defense
20 counsel made a point of asking Mya about the fact they
21 never met before, they never went through the questions
22 he was going to ask her.

23 The arguments you wanted to make from that,
24 her answers to his questions were going to be more
25 genuine, more credible than mine, because they were

People's summation

1517

1 spontaneous and the evidence shows you the answers on
2 cross-examination were actually more credible. They
3 were even more spontaneous because defense counsel
4 brought out and put before you the whole sad story of
5 Mya's ongoing victimization by this defendant.

6 Defense counsel chose and put before you the
7 history behind October 16th. You should weigh it
8 appropriately in determining the defendant's guilt
9 beyond a reasonable doubt about that day. That
10 information about the past is useful, completes the
11 narrative, helps you understand the defendant's motive
12 to put all of this conduct in momentary context.

13 Remember, the law only requires the People
14 prove beyond a reasonable doubt one incident, the one
15 day, the one with which the defendant is charged, oral
16 sexual contact with Mya on October 16th of 2013, in her
17 kitchen. You were selected to judge what happened on
18 that day, that is the day it all ended, finally. That
19 is the day an adult walked in on it, and that's the day
20 Mya pointed, explained what the defendant was doing to
21 her. That's the day we recovered saliva and DNA that
22 matched the defendant's profile from her underwear.

23 What did Mya say? Remember, although she was
24 young, she was able to swear to tell the truth. Not
25 only was she going to be punished if she lied to you,

kmm

People's summation

1518

1 but her mother was going to jail.

2 October 16th, the last time the defendant
3 victimized her, when it finally all stopped, Mya was
4 clear on that day and on direct, the defendant did it
5 one time that day in the kitchen. Mya doesn't know why
6 the defendant did it to her. She states she was
7 standing up and he was bending over.

8 Defense counsel did make a big deal about the
9 fact when he asked those questions, he was bending
10 over. First of all, Mya, is seven. That's not an
11 excuse. That's just a fact you have to take into
12 consideration when you are weighing her testimony.

13 Second, defense counsel did not, according to
14 the record, explain in her own words exactly how it
15 happened and she demonstrated the defendant was bent at
16 the waist like that. That was the defense attorney
17 doing that, that he bent over, demonstrated the general
18 concept of bending. Whether he bent at the waist and
19 whether the defendant bent at the waist or bent at the
20 knees, got down on the floor. Mya closed her eyes
21 during the actual contact.

22 You know just not based on her words that
23 this defendant's mouth and tongue were there,
24 regardless of the exact mechanism that the defense
25 wants to distract you with. He admitted his mouth was

People's summation

1519

1 there to Officer Boccio, Detectives Baran, Pacheco.
2 The defendant's DNA is in her underwear, male DNA on
3 her vulva from her on that date, and saliva is
4 indicated to be in both places.

5 Defense counsel questioned repeatedly how
6 many times the defendant molested Mya. Mya agreed that
7 she told her counselor Georgina that it happened five
8 times. She testified it didn't happen a dozen of
9 times, but approximately five.

10 She told the district attorney's about one
11 prior time. She apologizes for not telling the full
12 story. The evidence shows that she is not trying to
13 mislead the jury, and that she knows people should tell
14 the truth in court.

15 She explained she didn't tell anyone because
16 she was scared of her mom, she was scared her mom would
17 whoop her. Mya was five or six while this was all
18 going on. In her child-like way, she knew what was
19 happening to her was wrong. Common sense allows us to
20 understand, as a child, she probably thought to do
21 something wrong, you get punished. Her explanation is
22 reasonable. It makes sense. Understandably, Mya said
23 she wanted to put all of this out of her mind, freeze
24 it or erase it out. The pain in her eyes, as she said
25 that, I want to erase it, freeze it out. A seven-year

kmm

People's summation

1520

1 old can't fake that, can't rehearse that, can't
2 sanitize it in order to get them to do that.

3 The events she was describing, defense
4 counsel pushed her further and further were those
5 events, rushing events, that she doesn't like to think
6 about, what she plays and goes to school with those and
7 hangs out with her friends. You saw them in her eyes.

8 We were told by defense counsel that it
9 didn't happen. She doesn't change her testimony to fit
10 a question. She did not change her answer to please
11 him, the Judge, please me.

12 And then without prompting, not related to
13 any previous question, without anything to suggest the
14 answer to her, no one else alleging it or even
15 discussing it at this trial, Mya reveals she knows
16 information that could only come from experience. She
17 knows and she testified spontaneously to the fact that
18 a man's penis can be or at least can attempt to be
19 placed in a little girl's anus. In her words, that a
20 pecker could go into a butt the way she said it. You
21 know Mya, she explains to you it hurts. She doesn't
22 just allege it is possible. She didn't testify it was
23 funny or embarrassing. She told you it happened to
24 her, that this defendant tried to do that to her, and
25 you, ladies and gentlemen, know it has because Mya

People's summation

1521

1 knows it hurts. Even on this Mya didn't exaggerate.
2 She did not agree with defense counsel there was blood.
3 Although, when he first asked about it, there is back
4 and forth later clarified when he was talking about
5 blood and pain, it related to when she was bitten by a
6 guinea pig. She didn't agree with defense counsel on
7 other liquids. She said, no, there weren't. She said,
8 Danny, the defendant, put his pecker in her butt and it
9 hurt her, and it hurt. She remembered that pain.
10 Think about it through her testimony. Mya never became
11 imaginative, never claimed anything elaborate. The
12 molestation didn't go on forever. She limited it,
13 saying it was approximately the time she was in the
14 first grade.

15 The one additional detail she does add is the
16 defendant kissed her. That seems perfectly reasonable,
17 according to the evidence. She explained, as best as a
18 seven-year old could, the anal sexual contact occurred
19 at night when her mother was not home in her mother's
20 bed, and the other incidents, she explained happened in
21 the day.

22 Mya described, according to the defendant's
23 testimony, according to what he said everything she
24 told you was possible, he did have access during those
25 times. He was there at night, he was there during the

People's summation

1522

1 day. He was alone with her and alone with Sincere.

2 The defendant and the defense ends with
3 trying to get her to say the molestation never
4 happened, or it happened more than five times, but she
5 remains consistent, it did happen, and it was five
6 times.

7 She sat here and told us, all of you what
8 happened to her, what has been happening to her. She
9 told you in the manner appropriate for a child. She
10 didn't remember the exact number of times, places, the
11 exact dates, that this all happened. Defense counsel
12 should put it together. She did have to get excused
13 off the stand. She was crying. She had to put it
14 together and that's a fair term. If she had it at her
15 fingertips what she had, the dates that it happened,
16 every time it happened, and rattled those off for you,
17 that would be unfair and rehearsed and false testimony,
18 and not what you saw there from her. She was
19 consistent because the evidence proved she wasn't
20 making up a fantasy that she could freely change it
21 each time she told it. No, instead she was hearing the
22 nightmare that was her life. She doesn't fully
23 comprehend. That's because she is a child.

24 She sat here and pointed at the defendant,
25 named it, called him Danny on her vagina, Danny on her

People's summation

1523

1 coochie. That day the police came to her house. That
2 day she had to tell you when they arrived in the
3 ambulance, she told you it happened in the kitchen,
4 that day. It was oral sexual contact. The evidence
5 supports and corroborates the painful reality. She is
6 telling the truth. The defendant is guilty and her
7 nightmare is finally over.

8 The defense would have you believe instead,
9 this is actually -- argue that this is actually part of
10 a scheme, part of a conspiracy, Mya doesn't want to be
11 in trouble for being naked. That is high crime,
12 according to the defendant, in the Ramirez' household,
13 to get out of nineteen months, allegedly being naked in
14 her house, Mya is continuing this lie to this day, went
15 through the rape exam, testified on the stand, gone
16 through all through this, all just because supposedly
17 serious to be undressed in her house.

18 Defense counsel needs to keep her a victim,
19 looking for sympathy. She told you she doesn't want to
20 remember, doesn't want to think about this. She is not
21 looking for sympathy. She's just a child. She wishes
22 it didn't happen to her, and with regard to whatever
23 was said, not said to Nurse McAllister, there is no
24 testimony in this trial that she ever asked Mya if it
25 ever happened before. There is no testimony in the

People's summation

1524

1 trial inquired of that, dealing with Mya. And when she
2 was alone with Detective Baran, why Mya did, when asked
3 finally, by Detective Baran, she did say something
4 happened.

5 Now, although Mya's testimony, her tears,
6 along with her mother's testimony, her brother's
7 testimony, all that gets us beyond a reasonable doubt.
8 October 16th is a day, you, ladies and gentlemen of the
9 jury, you don't need to depend on any one actual
10 witness. You have all of them. And you have all of
11 them, you actually have a separate interview
12 corroboration of everything they told you.

13 October 16th is the day you have the
14 defendant's statement to Officer Boccio, Mya's rape kit
15 and DNA evidence consistent with the evidence recovered
16 from the underwear, a written statement of admission
17 from the defendant that was based on English words and
18 read back to him in Spanish.

19 October 16th is the day you have separate
20 independent evidence corroborating the defendant's
21 guilt beyond a reasonable doubt. With these, the
22 process of the arrest date, Officer Boccio, the Judge
23 will instruct you on New York law, you are not required
24 to give the defendant Miranda warnings for you to find
25 them to be voluntary. Those statements to Officer

People's summation

1525

1 Boccio, on the scene in minutes. Officer Boccio -- the
2 defendant is still there. It was a simple
3 conversation. Officer Boccio testified to it. What is
4 going on, the officer is asking. The defendant says in
5 response, she is going to tell you that I raped her
6 daughter. Officer Boccio followed with a question, I'm
7 going to need more than that. The defendant's
8 statement, it was stupid, I only licked her once in the
9 bedroom.

10 How do you know what Officer Boccio told you
11 is true? First and foremost, the evidence shows, as I
12 have said over and over and over, he has no motive to
13 lie. He's not interested in the outcome of the case,
14 never met Crystal, Mya, or the defendant before October
15 16th.

16 Secondly, because the exact nature of the
17 admission, licking her, is corroborated by the DNA, by
18 the saliva that was found, that he could not have had
19 any idea existed at this moment. It was found in Mya's
20 underwear and vulva, just as his confession told to
21 Officer Boccio stated. And that testing wasn't done
22 for months after the arrest, and Officer Boccio had no
23 idea one out of 175 million match was even there.

24 About the question of notice, now, defense
25 counsel here, again, misled you about notice and

kmm

People's summation

1526

1 writing things down, and recording what happened on
2 that day. If you recall, defense counsel didn't get
3 the statement of admission correct about Officer
4 Boccio's testimony that the defendant didn't say that I
5 raped her daughter. No, the defendant said that
6 Crystal was going to accuse him of that. But Officer
7 Boccio didn't invent his admission for the trial or
8 hearing. It was written down that day and that was
9 testified to. It was written down that day by the
10 detective who Officer Boccio told the statement of
11 admission to. It was typed into the crime report. It
12 was included in the paperwork and served on the defense
13 at the arraignment nineteen months ago. It was
14 written --

15 MR. BERGER: There is no evidence of this.
16 It's just speculation.

17 THE COURT: All right, it's going to be your
18 recollection that controls with regards to what is or
19 is not evidence. This is just arguments of the People.

20 You may continue.

21 MR. PERRI: There is no evidence that the
22 defendant was tricked into saying what he said. There
23 is no evidence that he was threatened, no threat
24 evidence, intimidated. There are two simple questions
25 that prompt the unthinkable, otherwise, irrational

People's summation

1527

1 response, arrest me. She says, I raped her daughter.
2 It's stupid. I licked her once. Officer Boccio was
3 going to invent a statement? It would have been
4 damaging, tried to make everything sound worse, not
5 better. The sentiment in that statement, no big deal
6 corroborated by everything else in the incident that
7 was discovered. This is no big deal in the statements
8 and on the stand here. It wasn't serious. I didn't
9 think I was in that much trouble, and therefore, the
10 evidence, as a whole, shows you, the defendant, made
11 that statement and made it voluntary, and Officer
12 Boccio's testimony is credible.

13 Detectives Baran and Pacheco, despite the
14 defendant's self-serving unsupported testimony to the
15 contrary, some of the rest of the evidence in this case
16 before he proves in his native language, before he gave
17 a written confession, he knowingly, voluntarily waived
18 those rights in Spanish. Si twice, two signatures
19 after two questions about waiving his rights.

20 Detective Pacheco testified for you that he
21 read the first two full paragraphs to the defendant and
22 the third signature of the defendant read the
23 declaration out loud to Detective Pacheco. The card
24 has the translation on it, you can read it just as it
25 was read to him in Spanish by Detective Pacheco.

People's summation

1528

1 Detective Pacheco is a native Spanish
2 speaker. He testified he is from Puerto Rico, who is a
3 twenty-plus year veteran of New York City and the
4 Nassau County Police Department. The defendant proved
5 he was capable, but he did it before you on the stand
6 here.

7 The language, although, it is technical, it's
8 not that hard. It doesn't require that a lawyer be
9 provided to understand your basic constitutional
10 rights, the right to remain silent, keep your mouth
11 shut. The Judge will explain further the explanation
12 of those rights, just that the defendant was advised of
13 them.

14 Now, the statement to Detective Baran itself.
15 Detective Baran is a thirty-year-plus veteran of the
16 police department. You don't have to like him. You
17 may believe he did do the bare minimum investigating
18 this case. I'm not saying you have to believe
19 otherwise. Defense counsel brought out on cross those
20 additional evidence, supposedly could have been
21 gathered if he bothered to gather it. He could have
22 possibly led to additional charges, but Detective Baran
23 explained additional evidence that was speculative
24 evidence, but doesn't take away from all of the
25 evidence currently before you about this one charge.

kmm

1 The one charge the defendant is facing, but
2 that the lack of interest, the lack of interest in
3 filing as many charges as possible could get on the
4 defendant, arguably doing the bare minimum. It goes to
5 Detective Baran's credibility in this case. Why would
6 he go the extra mile? Why would he go the extra mile
7 and lie and get this guy, the defendant, he never met
8 before. He's either lazy, as defense counsel wants you
9 to believe, or he is not. One of the two. If you want
10 to be both, exactly at the same time. Go get a liar,
11 going to try to create more evidence, but at the same
12 time, fail to explore all of the possibilities. If he
13 really had it out for the defendant and was willing to
14 lie to risk his career since he was aware that Mya had
15 said that things had happened before, wouldn't you
16 include those in inserting lines in the defendant's
17 statement? According to the defendant, wouldn't he
18 have made it worse since he was tricking him anyway?
19 Wouldn't he had made it more than a tickle game, or
20 describing it as a tickle game is part and parcel of
21 how this defendant views everything that occurred on
22 October 16th?

23 Everything speaks of the fact that this
24 defendant is bilingual. He was given an option to
25 speak in Spanish, instead he chose to try in English.

People's summation

1530

1 It's not reasonable that Crystal was friends with the
2 defendant for a decade, had him as a baby-sitter, and
3 he helped the children with homework if he didn't speak
4 and read. The defendant's job itself in the MTA as a
5 NICE bus driver, according to your common sense and the
6 testimony, he had to literally see in English and the
7 document was in front of his face. He signed it. He
8 had to read it.

9 Police Officer Boccio's hearing, the
10 defendant makes his statements of admission, told you
11 other information. The defendant followed many
12 directions during the arrest process in English. He
13 asked for and received food in English. He asked to
14 use the bathroom in English.

15 The defendant spoke with Detective Baran in
16 English about the incident in a incoherent manner.
17 There is no testimony in this case that Detective
18 Pacheco had a separate conversation with the defendant
19 in Spanish about the incident. That simply was not
20 part of the record.

21 The defendant acknowledged that is all of the
22 information in People's 12 in his statement of
23 admissions is correct up until the one damning
24 sentence. The evidence proved that information came
25 from the defendant. Detective Baran doesn't speak

People's summation

1531

1 Spanish. All of that information, the correct
2 information that the defendant acknowledges came from
3 him. Just basic literacy. To read the statements, you
4 did not have to have a BA in Shakespearean Drama.
5 Although, it would be necessary to understand the
6 defendant's statement, it's basically his words that he
7 offered, rather than as it would be the rights card,
8 you are giving him words that he has to understand from
9 someone else. The statement itself was composed as
10 much as practicable, using the defendant's words and
11 you could notice how similar to how he testified. I
12 noticed before using the term little girl, instead of
13 naming Mya. This is evidence the statement came from
14 him and not from Detective Baran's imagination.

15 According to the statement, it was prompted
16 by simple question of Miranda, just as it occurred with
17 Officer Boccio. Detective Baran did not tell him he
18 was charged with criminal sexual act in the first
19 degree. But also, the defendant did not dispute this.
20 He never asked. He never asked what he was charged
21 with. Defense counsel said, wouldn't you ask. And
22 that might be true, but the reason why you would ask
23 what am I charged with, because you are innocent of a
24 crime. Why didn't he ask? Because he knew why he was
25 there. There was no delaying reporting. He was

kmm

People's summation

1532

1 arrested at the scene. He already admitted everything
2 to Detective Boccio, what he did. The evidence shows
3 he knew why he was there, and it is reasonable and
4 responsible police work to think if he actually told
5 him the technical name for the charges, criminal sexual
6 act in the first degree, either it would have tainted
7 the interview and led to the accusation that it was fed
8 to him, the facts he had to admit to, or to be guilty
9 of a crime, or it would have possibly led him to shut
10 down, and that's a reasonable concern as a detective.
11 You don't want the guy you are interviewing to suddenly
12 stop talking, to stop consenting to answering the
13 questions, and you don't want this defendant to say,
14 I'm not going to give you a DNA sample.

15 The Judge will instruct you on the law. It
16 does not require the defendant ever be told what he was
17 charged with. He's not required for the law, and it
18 didn't happen. And there's good reason why. He knows
19 why it was there.

20 THE COURT: How much longer? I want to give
21 the people a chance to stretch.

22 MR. PERRI: That's fine. We can do that.

23 THE COURT: Let's take a five-minute stretch
24 and use the facility.

25 (Whereupon, the jury exited the courtroom.)

kmm

People's summation

1533

1 (Whereupon, the jury entered the courtroom.)

2 (Whereupon, the jury entered the courtroom.)

3 THE CLERK: Both sides ready?

4 MR. PERRI: Yes.

5 MR. BERGER: Yes.

6 THE COURT: Welcome back, everyone.

7 Mr. Perri.

8 MR. PERRI: Yes, your Honor.

9 Ladies and gentlemen, the statement, the
10 conversation between Detective Baran and the defendant
11 started with just a question of what happened with Mya.
12 There is no evidence of tricks, no evidence of games,
13 no evidence of Detective Baran leading the defendant to
14 what he said. Look at the substance of the statement
15 itself. If it were a lie, why would Detective Baran
16 include the disparaging comments, why would he include
17 the statement about how the defendant cares about and
18 helps the children with their homework. Those facts
19 are in there because they are what the defendant was
20 seeing. They were building an excuse that he hoped law
21 enforcement that day would take and hoped you would now
22 give him the benefit of the doubt. Even the manner in
23 which it was a criminal act or sexual act. It's not
24 reasonable that Detective Baran would, himself, call a
25 six-year-old girl's vagina a pussy, a man who has

People's summation

1534

1 worked years to stop child sexual physical abuse
2 freely of his own choice use that word to support that
3 term.

4 The evidence shows that's not reasonable and
5 the statement also says that oral sex was just a
6 tickle. The idea that oral sex on a six-year old could
7 be described that way, doesn't align with Detective
8 Baran. It aligns with the defendant's attitude,
9 attempt to make it seem not as bad as it actually is.

10 Common sense tells you that the defendant,
11 having been caught almost in the act, wanted the
12 detective to think it was a mistake, a game, a fun
13 little thing, rather than the painful simple truth that
14 he committed a heinous act of sexual abuse on a child.
15 All of the evidence in this case compels you, pushes
16 you to the conclusion that this defendant was molesting
17 Mya just as he confesses, just as the DNA shows you,
18 just as Mya, Sincere testified to, and Crystal
19 testified that this wasn't the first time.

20 Most of the statement that he signed,
21 especially the most critical portion, was Detective
22 Baran stated unequivocally on the stand that they were
23 the defendant's exact words. That the defendant said,
24 he tickled Mya's pussy with his mouth. In addition to
25 being his words, you know the defendant adopted his

People's summation

1535

1 statement. There is evidence in the record that he
2 read it in English. He was able to read the statement
3 here on the stand before you, who he wants you to
4 believe he picked up that ability while he has been
5 incarcerated, adopted it because he made corrections.
6 He pointed out mistakes and went back and multiple
7 portions of the document is going all of the way down
8 and signing the bottom of each one. There weren't
9 sentences shoved in that went unnoticed.

10 The defendant reads on a sixth grade level
11 like a graduate student. The statement, you know the
12 defendant knowingly adopted, because out of an
13 abundance of caution, it wasn't left in English, it was
14 translated to him in Spanish.

15 Detective Pacheco, a native speaker, he
16 testified here to you that he uses Spanish everyday.
17 He grew up speaking Spanish, learned English in school,
18 took no issue with the actual accuracy of any of the
19 translation. Although, how fluid Detective Pacheco
20 performed when he had to do it on the spot, had to
21 translate the handwritten grammatically incorrect
22 apology letter of the defendant here on the stand, at
23 no point as either the defendant or defense counsel
24 actually said, Detective Pacheco wasn't accurate in his
25 translation.

People's summation

1536

1 As we said in the beginning, Detective
2 Pacheco never met Crystal, Sincere, never met Mya,
3 didn't know the defendant before that day. Under the
4 circumstances, not even his case. Detective Pacheco
5 testified under oath he translated all of the letter,
6 the entirety of it and specifically testified before
7 all of you he did translate pussy as vagina. He
8 translated it that way because there could be no
9 mistake, no ambiguity, no thinking, other than it was a
10 six-year-old's vagina that the defendant admitted
11 multiple times that he had oral sexual contact with.

12 The only other role Detective Pacheco, he
13 translated the defendant's letter. In that letter, it
14 is more evidence, but when defense counsel gets upset
15 about the fact he got more evidence, it is the exact
16 opposite position, again, for not getting enough
17 evidence. There is no way to win, according to defense
18 counsel's rule with respect to judging the police
19 department. You could get more, it's because you are
20 doing something wrong. If you don't get more, you are
21 doing something wrong no matter what. Somehow that
22 translates into reasonable doubt.

23 Instead, the detective gets more evidence.
24 He got evidence in a written letter that the defendant
25 was sorry for something, not sorry for Crystal. Sorry

kmm

People's summation

1537

1 for something that was done and specifically addressed
2 to Crystal and Mya, a thousand pardons. Please drop
3 the charges. This is after Miranda warnings. This is
4 after the statement of admission. The apology letter
5 is additional evidence.

6 As the night went on in the special victims
7 squad, the defendant got more desperate. Crystal
8 caught him in the act, and Mya outcried. He confessed
9 to it twice already, Officer Boccio and Detective
10 Baran. What is there left to being, and that is what
11 his apology letter is. It's compelling. Defense
12 counsel, he should have said in there what he did. Do
13 you think saying to Crystal, I had oral sex with your
14 daughter would actually get him what he wanted at that
15 point, actually get her to accept a thousand pardons
16 and drop the charges? No that does not make sense, but
17 each and every step of the evidence shows the
18 defendant's admissions are part of a plan. It's a
19 particular plan, but a bad plan to escape the full
20 responsibility for his conduct. It was a tickle. I
21 licked her once. It was a tickle game. I'm sorry, I
22 meant no harm. Please drop the charges.

23 Throughout this case, in the statements and
24 on the stand, when he tells you it wasn't serious when
25 he was already in custody, he admits to what he has to

People's summation

1538

1 do, but then he leaves out, denies all of the rest that
2 he can't. He furnishes excuses. He downplays the
3 intention by the abuse and begs forgiveness.

4 There is zero evidence in this case of
5 trickery, deceit, maltreatment, or promise, or any
6 other form of misconduct of giving free voluntary
7 statements. The defendant's admission don't exist in a
8 vacuum, but they're one piece of a pretty simple puzzle
9 before you. They are one support of a many legged
10 table that is proving the defendant's guilt beyond a
11 reasonable doubt. No single part of this case holds
12 everything up by itself. The voluntary admission
13 statements fit with everything else you learned in this
14 case, and the evidence proves collectively not that
15 there is a grand conspiracy had by a six-year old.
16 That the defendant admitted his guilt, a guilt the
17 People have independently proven beyond a reasonable
18 doubt.

19 The last portion of the evidence is the DNA.
20 It doesn't get much more separate than the DNA, despite
21 what defense counsel says. It does not exonerate in
22 any way, shape, or form, either according to experts or
23 the defendant's guilt.

24 You learned where all of the DNA used in this
25 case came from, how it was tested, how Mya's tiny body

1 was swabbed and examined at NUMC, the buccal swab, the
2 defendant's DNA had not been collected at that point,
3 and all of that evidence was turned over, sealed, a
4 sealed envelope inside of the box, sealed by Nurse
5 McAllister, who herself had her, Mya, reported that
6 Danny licked my coochie, that she sealed all of that
7 evidence after exam, turned it over directly to
8 Detective Baran, received by the Medical Examiner's
9 Office, still sealed, just as Nurse McAllister had it.

10 Then it was tested by Mr. Chillseyzn. How
11 about his background? His entire career in forensic
12 genetics. He worked for the Medical Examiner's Office
13 in the City of New York, State of New Jersey, and here
14 in Nassau County for over 15 years. He, himself,
15 examined thousands of pieces of evidence, created
16 thousands of DNA and made a comparison. He was always
17 found proficient and competent, and it's he who
18 testified as an expert in New York, New Jersey, never
19 being found by a Court not to be an expert in forensic
20 genetics.

21 Mr. Chillseyzn, a forensic geneticist, who
22 actually tested evidence in this case, whom defense
23 counsel found no problem with any of the testing that
24 he did. He handled the evidence. He compiled the
25 findings. Mr. Chillseyzn was not flown in from

People's summation

1540

1 Chicago, not the owner of a private laboratory, not
2 being paid for his testimony.

3 First, Mr. Chillseyzn testified that the
4 vulva swab of Mya's genitals indicated on October 16,
5 2013, there was saliva present there. Unlike defense
6 counsel's expert, he never overpromised. He did not
7 make inferences, didn't make guesses. He only stated
8 to you exactly what he knew and what he scientifically
9 proved. He never claimed that he could, with any
10 scientific certainty, identify who deposited the saliva
11 because the saliva itself doesn't have DNA from skin
12 cells.

13 Defense counsel brought the same fact out
14 himself. He cross-examined Mr. Chillseyzn, although,
15 he misrepresented the record to you. Here the evidence
16 shows that Chillseyzn exercised professional restraint
17 and testified to the facts. On the same swab, Mya's
18 vulva swab, he testified to the fact that there was
19 some small amount of male DNA on that swab. Defense's
20 expert was forced to concede this was true, that there
21 is a difference between it not existing and not having
22 enough to find the alleles and make a profile. The
23 amount of YSTR male DNA was measured, quantified, and
24 in the bench notes, as their expert conceded. It's
25 nevertheless there, male DNA, alongside with saliva and

People's summation

1541

1 Mya's genetic code, after all, they were swabbing Mya's
2 vulva.

3 Mr. Chillseyzn turned his attention to Mya's
4 underwear. He found two saliva stains on the inside of
5 the material in the front, the area closest to Mya's
6 vagina. The clothing area contained mostly Mya's DNA.
7 Mya's skin cells were rubbing on that all day long,
8 along with Mya's DNA. There was additional DNA, male
9 DNA, enough male DNA to create profiles. Through
10 various forms of testing, Mr. Chillseyzn was able to
11 determine the following:

12 The defense expert conceded the findings were
13 true. For the first stain 1-A1, the male donor in that
14 stain is either the defendant or a male patrilineal
15 relative of him. And for the second stain, stain 1-A2
16 in Mya's underwear, the minor autosomal kind, who was
17 also the major male YSTR DNA contributor in that same
18 stain, has a has profile consistent with the defendant.

19 For that second stain, Mr. Chillseyzn
20 testified that the statistical analysis was conducted,
21 and the defense's expert never questioned the stats and
22 it reveals it's a one and 175 million chance it's
23 anyone else other than the defendant whose DNA is in
24 that saliva stain.

25 Defense counsel made a big deal about the

People's summation

1542

1 minor donor and second stain, and there was testing
2 conducted of that minor donor, but no match found. And
3 so, maybe defense counsel is right, there is a second
4 guilty party. The fact that the minor contributor
5 hasn't been identified doesn't in any way, shape or
6 form take away the fact that the defendant's DNA is in
7 there on both stains alone, not in one of the stains,
8 but in both stains, and one and 175 million that the
9 other person wasn't found with Mya with her pants down,
10 that other person, who is speculative, that defense
11 counsel talks about wasn't the one that got all of the
12 access that this defendant did over the months before
13 this incident.

14 Mr. Chillseyzn testified to nothing more and
15 promised nothing less than the facts. The tests and
16 numbers shows no leaps, no inferences, no educated
17 guesses. Defense counsel's last problem when brought
18 up on summation is he didn't test all of the unstained
19 areas of the underwear. Their own expert conceded his
20 lab could of done that testing, and if, in fact, it was
21 critical, why didn't they do it? They had an expert
22 here. They had a laboratory that could have conducted
23 it if it would have proved anything. They should have
24 accomplished that testing. What happens if you tested
25 one other area that wasn't stained? That area, the

People's summation

1543

1 defendant's DNA didn't show up there. Then the
2 argument would be, we didn't test the right area. You
3 have to test every single square centimeter, destroy
4 the entire item before there would be any actual
5 result, and it doesn't lead anywhere and not a natural
6 problem, because if it was, the defense would have
7 addressed it.

8 The defense hopes to ignore DNA testimony.
9 The defense hopes you will ignore, set aside, and look
10 past all of over evidence in this case, blindly assume,
11 you will assume without the basis of the known facts
12 this is all just a coincidence. Trust the defendant,
13 disbelieve every other single fact witness in this
14 trial. Then hopes you will speculate without Mya, then
15 six years old, drooled, spit, or otherwise deposited
16 her own saliva on her own genitals at the same
17 fortuitous moment that Crystal opened the door at that
18 moment, that the defendant happened to be there on the
19 ground putting on her underwear. That level of
20 coincidence just isn't reasonable. This case is not
21 just about the DNA evidence. This case is not just
22 about victim's testimony, it is not just about
23 confession, not just about an admission, not just about
24 two civilians testifying.

25 This is a case, a very sad, simple case about

People's summation

1544

1 all of it, all of it together, layer after layer of
2 evidence coming together, urging you, ladies and
3 gentlemen, urging you to inexorable conclusion that
4 this defendant is guilty for what he is charged. That
5 all of the corroboration, all of the independent
6 evidence, all of the testimony coming together to push
7 that beyond any reasonable doubt. This evidence shows
8 you this case really isn't complicated. It might be a
9 lot. I might have talked to you a ridiculous amount of
10 time. It's not complicated. It isn't.

11 After hearing all of the evidence in the
12 case, you have come to understand it happened to Mya.
13 It's tragic, painful, disturbing, but clear. Do not
14 lose sight of the fact that nothing that is actually
15 before you as evidence, none of the testimony, no part
16 of the oral statements of admission, none of the --
17 except the defendant's testimony, clouds or contradicts
18 anything else that was presented to you in this trial.
19 The only reasonable answer to all of the questions I've
20 asked to you, ask yourselves over and over, according
21 to the evidence, the defendant is guilty beyond a
22 reasonable doubt. You have credible disinterested
23 testimony from the family, separate independent
24 corroboration from law enforcement, from DNA, from
25 medical personnel.

kmm

People's summation

1545

1 I ask you now to do your duty. I ask you to
2 go back, weigh the evidence. You won't find it
3 lacking. Return the only fair and just verdict when
4 you apply the law to all of the evidence going on. It
5 demands that this defendant is guilty, guilty of both
6 counts, guilty of criminal sexual act in the first
7 degree for having oral sexual contact with Mya, a child
8 under eleven, and for that same exact conduct, the
9 evidence compels you to find him guilty of endangering
10 the welfare of a child. Thank you.

11 THE COURT: All right. Ladies and gentlemen,
12 given the hour of the day, I'm not going to start my
13 charge on the law to you because we would have to stop
14 before I got finished. We'll start with my charge on
15 the law tomorrow morning at 10:00 a.m. When I complete
16 my charge to you on the law, you will then be told to
17 return to the jury room and start your deliberations.

18 Between now and then, you must keep an open
19 mind. Do not discuss this case amongst yourselves or
20 with anyone else. Do not permit anyone to discuss the
21 case in your presence. Do not talk to the lawyers,
22 witnesses, or the defendant about anything during this
23 overnight break.

24 And do not visit or view the place where the
25 charged crime was allegedly committed, or any other

People's summation

1546

1 place involved in this case.

2 And if there is any news coverage of the
3 case, do not read or listen to any accounts or
4 discussions of the case reported by the news media. Do
5 not attempt to research any, fact, issue or law related
6 to this case, whether by discussion with others. By
7 research, I mean the library, the internet or by any
8 other means or source. Have a great evening. See you
9 tomorrow morning at 10:00 a.m. sharp.

10 (Whereupon, the jury exited the courtroom.)

11 THE COURT: Anything for the record?

12 MR. PERRI: No, your Honor.

13 THE COURT: Defense?

14 MR. BERGER: The arguments made propounded by
15 the prosecutor were made in bad faith. We predicted,
16 when I submitted Court Exhibit X to you that it would
17 make an argument that out of the blue, Crystal Ramirez
18 is now distressed about what she sees in the kitchen,
19 when the prosecutor clearly knows that this woman has
20 been through a bad experience with respect to all of
21 this. We predicted he would make it and he made it in
22 bad faith because the prosecutor knows what Crystal
23 Ramirez had been through.

24 We also -- Mr. Perri, in bad faith talked
25 about Sincere's testimony and how he broke down because

kmm

1 he had seen pornography. When the fact of the matter
2 is, Sincere most likely broke down only because of what
3 was done to him many years ago. But to make that
4 argument to this jury, when he knows what Sincere has
5 been through, is a second exhibit of bad faith.

6 And then he says to the jury the fact that he
7 knows that is not in evidence. That was Boccio's
8 supposed statements that were put in the arrest
9 reports. Now, I made an objection to that at the time
10 and you sustained it. That's not in evidence, but for
11 Mr. Perri to get up before this jury and say that
12 Boccio did make notes when he didn't make notes, number
13 one, and number two, whenever the reports -- and he
14 said the reports were put in there by the detectives
15 and given to Mr. Berger, it's true that the reports
16 were given to me, but the reports that were written
17 down by the detectives are not in evidence. You
18 sustained the objection because they didn't testify to
19 that, nor could they.

20 So, in three separate instances, Mr. Perri
21 made bad faith arguments to the jury when he knew
22 better. He can't get around that. He knew better.

23 On that basis, I move to dismiss the
24 indictment with prejudice against him for making bad
25 faith arguments to this jury.

Proceedings

1548

1 THE COURT: Do you want to be heard?

2 MR. PERRY: The People oppose defense
3 counsel's application with respect to two of three
4 instances. He failed to object in a timely fashion
5 during the summation, so he waived the objection to do
6 that. He can't now bring it up to the Court. The
7 People exhibited no bad faith in any of their
8 arguments. The People oppose defense counsel's
9 application.

10 MR. BERGER: If timely is a necessary basis
11 for bad faith arguments, then I don't think the
12 Appellate Court will really --

13 MR. PERRI: May we approach?

14 THE COURT: Sure, you could approach.

15 (Whereupon, there was a sidebar discussion
16 with the Court and counsel, as follows:)

17 MR. PERRI: I don't know if you want a record
18 now. People take exception to defense counsel
19 constantly throwing around the term bad faith without
20 any basis and make allegations that go to the heart of
21 the People's personal credibility, constantly in front
22 of the jury, or in front of the audience in the
23 courtroom. You need to address --

24 MR. BERGER: I spelled it out clearly, your
25 bad faith.

1 THE COURT: We're going to finish this here
2 because what I'm going to say you might not want the
3 audience here either. I noticed, Mr. Berger, numerous
4 times in your summations when you blatantly ignored the
5 directives of this Court with regard to sustained
6 objections and moving forward. I will note the
7 numerous times you, throughout this trial, that you
8 have blatantly ignored this Court and put forth
9 statements about this Court's behavior that were not
10 backed up with any evidence.

11 I will note that during the summations I gave
12 you both leeway to make arguments that you felt were
13 appropriate and only stopped you from making these
14 arguments when they were so far afield of what the
15 evidence showed that there was no proper place for
16 them.

17 I do not find either of you during your
18 summations to have acted in bad faith, possibly
19 overzealous in some of your arguments. Possibly,
20 desirous of ignoring the Court's directive. I did not
21 find bad faith. I will not sit here and have bad faith
22 continue within the theme by the defense of everyone's
23 actions in the courtroom, except the defense. You
24 don't have to like my decision, but I'm not going to
25 sit here and have a record made in front of this

Proceedings

1550

1 audience that for the umpteenth time discusses bad
2 faith that is not evidenced anywhere in this record.

3 Your application for a mistrial for dismissal
4 of the indictment, for whatever it is you want to have
5 happened now, that application is denied.

6 I will charge this will jury in the morning
7 and they will deliberate accordingly. That's the end
8 of this record. Have a good night, gentlemen.

9 MR. PERRI: Thank you, your Honor.

10 MR. BERGER: Thank you.

11 (Whereupon, the trial was adjourned to May
12 27, 2015.)

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1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 43

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 742N/14

5 -against- :

6 DANIEL RAMOS, :

7 Defendant. :

8 -----X

9 May 27, 2015
262 Old Country Road
Mineola, New York

10

B E F O R E:

11

12 HONORABLE TERESA K. CORRIGAN,
Acting Supreme Court Justice

13

A P P E A R A N C E S:

14

(As Previously Noted)

15

16

17

* * * * *

18

19 THE CLERK: Case on trial, Indictment Number
20 742N of 2014, People of the State of New York vs.
21 Daniel Ramos.

22

23

Let the record reflect all parties are
present. The jury is not present at this time.

24

25

Carmen Knight is the Spanish interpreter
today.

Proceedings

1552

1 Are the People ready to proceed?

2 MR. PERRI: Yes, your Honor.

3 THE CLERK: Defense counsel ready?

4 MR. BERGER: Yes, your Honor. I have an
5 application.

6 THE COURT: Go ahead.

7 MR. BERGER: May it please the Court, when we
8 ended yesterday, I had made an application for, I
9 believe it was a mistrial based upon three arguments
10 that the prosecution had put forth during his summation
11 which I thought were unfair. I am making now a fourth
12 argument with respect to something the prosecutor did
13 in his summation, which I would suggest to the Court is
14 actually the most egregious action taken by the
15 prosecutor in his summation.

16 The prosecutor said that my argument with
17 respect to the examination of the non-stained portion
18 of the underwear could have been tested by the
19 defense's expert and we didn't do it. That, is clearly
20 burden shifting.

21 Now, the prosecutor was aware of the concept
22 that there is no burden upon the defendant to do
23 anything. He mentioned it at least two to three times
24 during his summation. Nevertheless, he made a
25 statement that the defense's expert could have examined

1 a non-stained area, but didn't. The implication, if
2 not the outright suggestion to the jury was, because if
3 he had done that, it would not have been favorable to
4 the defense. But even if it wasn't his intention, it
5 still was a possible approach that could have been
6 taken. But even if we ignore that approach, Judge, the
7 fact that he is making this suggestion that we didn't
8 do something, was absolutely wrong. Because, as I
9 said, it's burden shifting in violation of New York and
10 Federal Law.

11 Now, I'm asking the Court to declare a
12 mistrial based upon that conduct by Mr. Perri. If the
13 Court fails to grant that application, I'm asking for
14 the Court, in the alternative, to either tell the jury
15 immediately when they come in before your charge, or
16 during the charge, that the arguments that Mr. Perri
17 made was improper and wrong, and that they are not to
18 consider it, that the defendant has no burden to put
19 forth anything, that it's only the People. You said it
20 a number of times. I think it needs to be emphasized
21 because the arguments propounded by the prosecutor was
22 way out of line and totally improper.

23 The Court can, if it chooses to have the
24 reporter read back that last section of Mr. Perri's
25 summation just for your edification, but I think we all

1 recall Mr. Perri said that, in fact, they could have
2 called their own expert to have examined the
3 non-stained area of the underwear.

4 THE COURT: People.

5 MR. PERRI: The People oppose defense
6 counsel's application for a mistrial, as defense
7 counsel noted, on at least three occasions in my
8 summation, I noted the defense has no burden that they
9 had to prove nothing. Specifically, in switching from
10 comments on the defense's case to the People's own
11 case, I stated that I had to revisit the People's case
12 because the burden is the People's and the People's
13 alone in this matter.

14 With respect to the comments about the
15 testing of the unstained area, it is the People's
16 position it is fair comment. It was directed at the
17 defense's expert's testimony and defense counsel's
18 arguments in summation classifying such testing as
19 critical to the proper testing of the evidence in the
20 case. That the People do not believe any lengthy
21 curative instruction, or specifically, separate
22 curative instruction would be required.

23 The People would understand the Court, in
24 abundance of caution, may wish to add a curative
25 instruction specifically addressing that argument. The

1 People's position would be simply state that the People
2 made arguments during summation regarding additional
3 DNA testing and to remind the jury as the People did
4 repeatedly, throughout their summations, say the burden
5 never shifts, the defense carries no burden. The
6 summations are not evidence.

7 MR. BERGER: My response is that you could
8 say it fifty times during summation and come out and
9 put a burden defense on the end by making arguments
10 that we should have tested or we could have tested.
11 That's changing it. That doesn't cure what he did, and
12 all I'm saying is it seems to mean the prosecutor is
13 acknowledging that this might be appropriate. I think
14 it's absolutely necessary to make a curative
15 instruction here telling the jury Mr. Perri's comments
16 were in error, he should not have made such an
17 argument. There is no burden upon the defense to do
18 anything with respect to the testing of the underwear.

19 MR. PERRI: Finally, defense counsel
20 repeatedly attempted to ignore the Court's evidentiary
21 rulings during his summation. The People didn't
22 request a special specific statement to the jury that
23 defense counsel's behavior was inappropriate, wrong and
24 asking him for -- to be chastised.

25 Secondly, defense counsel failed to object in

1 a timely fashion. He did not preserve.

2 It is the People's position for appellate
3 review, he waited until after summations on the eve of
4 charge. Even bringing it up at this point it is not
5 the appropriate time.

6 THE COURT: Enough. Here is how the Court
7 will handle this. I'm fully aware of the statement
8 that was made. I'm also fully aware of Mr. Perri
9 continually stating throughout his summation that the
10 burden is the People's alone. When I read to the jury
11 the presumption of innocence, the burden of proof
12 charge, I plan on adding the following:

13 The statement here goes on to talk about, in
14 fact, the defendant is not required to prove or
15 disprove anything. This is what I will add. During
16 the People's summation, you may have heard Mr. Perri
17 state that the defense could have had his expert test
18 the underwear in this case. Although, not evidence,
19 that statement is to be disregarded by you, the jury,
20 as you know, because I have just told you the defendant
21 is not required to prove or disprove anything.

22 It goes back to my regular charge to the
23 contrary, the People have the burden of proving the
24 defendant guilty beyond a reasonable doubt. That is
25 what I will add with regards to this matter. And when

Proceedings

1557

1 the jury is ready, we will bring them in.

2 Do we have them?

3 If either wants to put a comment on the
4 record, you may do that now to preserve the record.

5 MR. PERRI: The only comments the People
6 would have to say is they wholly disregard it as posed
7 to be able to use it to judge the credibility of the
8 expert witness classification of the test being
9 critical. The People would say that inference would be
10 permitted, however, the burden, your description of the
11 defendant having no burden, is completely appropriate.

12 THE COURT: All right. I appreciate your
13 request. I'll leave it as stated.

14 MR. PERRI: Understood, your Honor.

15 MR. BERGER: I assume you are denying the
16 application for a mistrial?

17 THE COURT: I am denying the application for
18 a mistrial.

19 THE CLERK: After the jury is charged, I'll
20 be taking the evidence from you. Just have it ready,
21 please.

22 (Whereupon, the jury entered the courtroom.)

23 THE CLERK: Do both sides stipulate all sworn
24 jurors are present, People?

25 MR. PERRI: Yes, your Honor.

Proceedings

1558

1 THE CLERK: Defense counsel?

2 MR. BERGER: Yes, your Honor.

3 THE COURT: Good morning, everyone, members
4 of the jury. It now becomes my duty to charge you to
5 the law which applies to this case. Before doing so,
6 however, I would like to thank you, and I know counsel
7 thanks you also for your devotion to your duty as
8 citizens of the community and, in particular, for your
9 attention, patience, and understanding during this
10 trial.

11 It is now the utmost importance that these
12 final words in this case be given to you in a calm,
13 quiet atmosphere of reason thought.

14 Ladies and gentlemen, a trial by jury in
15 criminal cases is the very foundation of the true
16 administration of justice in our society. It is a
17 means by which we calmly, rationally, and objectively
18 try to arrive at the truth in a given situation.

19 After I charge you upon the law, you will
20 then retire to your final deliberations. You, as
21 jurors and I as the Court, have a great responsibility
22 to see that a just result is reached both on the law
23 and on the facts. It is most important that you give
24 careful attention to my charge to you. This merely
25 means that I will instruct you as to what the law of

1 this case is, and what law you should you apply to the
2 facts in this case, as you find them to be. It also
3 embodies the statement of the Court of what your duties
4 are as jurors, as distinguished as to what my duties as
5 the presiding judge are in this case.

6 You will find as I move along the charge is
7 divided essentially into two principle parts. First,
8 there is a general statement of the law applicable to
9 all jury trials in a criminal case.

10 Secondly, there is a statement of law which
11 particularly applies to the crimes charged in this
12 indictment. The mere fact that an indictment has been
13 handed down creates no presumption of the defendant's
14 guilt. Being, the indictment is merely an accusation
15 or the mechanics by which an accused is brought to
16 trial. It is without probative force and carries no
17 inference of guilt.

18 The fundamental duty of a jury in this case,
19 as in any case, is to determine the facts. You are a
20 factfinding body. Indeed, the law says that you are
21 the exclusive judges of the facts. On the other hand,
22 and with equal emphasis, I charge you that you are
23 bound to accept the law of the case as I instruct you.

24 After you have determined the questions of
25 fact, apply the law, as charged by me, and render a

1 verdict based upon the facts as you have decided them
2 and under the law as charged by the Court, each of you
3 must individually agree on the verdict. You must each
4 decide the case for yourself. However, you have a duty
5 to consult with each other and to deliberate with a
6 view towards reaching an agreement provided it can be
7 done without violence to your individual judgment. You
8 are required to impartially consider the evidence with
9 your fellow jurors before arriving at your verdicts.

10 In the course of your deliberations you
11 should not hesitate to reexamine your own views and
12 change your opinion if convinced it is erroneous, but
13 you should never surrender your honest conviction as to
14 the weight or effect of the evidence solely because of
15 the opinion of your fellow jurors or merely to return a
16 verdict.

17 In short, you are expected to confer, to
18 exchange ideas, to listen to your fellow jurors with an
19 open mind, remembering that each of you must
20 individually decide this case. Whatever your verdict
21 may be in this case, each count must be by unanimous
22 vote of you, the jury. It is essential that you base
23 your verdict upon the evidence and the evidence alone
24 as you have heard it from the mouths of the witnesses
25 and from the exhibits and/or stipulations which were

1 introduced into evidence.

2 You must not, under any circumstance, indulge
3 in speculation or guesswork, nor are you to consider
4 anything outside of the evidence. In other words, do
5 not try to be detectives. Do not try to conjecture
6 what you would do, or what should have been done, or
7 might have been done, or what could have been done.
8 You are not to base your verdict on sympathy or upon
9 what the reaction to your verdict may be, whether it be
10 popular or unpopular, whether it pleases or displeases
11 anyone, or what the effects may be insofar as
12 punishment of the defendant is concerned.

13 The question of punishment is simply not your
14 function, nor a matter for your interest or concern.
15 But a function which the law places upon the Court
16 alone. It rests with the judge and the judge alone to
17 fix such punishment as may be provided by law and, of
18 course, only in the event that it becomes necessary.
19 As I have said, your verdict is to be based upon the
20 evidence and the evidence alone.

21 The opening statements, summations, arguments
22 and remarks of counsel, are not evidence. They are
23 arguments propounded by the respective lawyers to
24 assist you in arriving at a conclusion, telling you
25 what they believe to be the conclusions you should draw

1 from the evidence. Neither is anything I say or might
2 have said to you with regard to the facts to be
3 regarded as evidence. It is not evidence. Evidence, I
4 repeat, is sworn testimony, plus the exhibits. I
5 further charge you that questions alone are not
6 evidence. It is a question together with the answer to
7 it which is considered as evidence.

8 If the attorneys during the course of their
9 summation or I, in my charge, should allude to any
10 alleged facts and your recollection of those facts
11 disagrees with the attorneys or my recital of them,
12 disregard what we have had to say for it is your
13 recollection of the facts which governs.

14 I have tried to preside impartially without
15 influencing you in your determination of the facts, and
16 if you have any feelings to the contrary, please put
17 them out of your mind. It is for you, the jury, as I
18 have already instructed you, to say what the facts in
19 this case are and whether the defendant is to be
20 convicted or acquitted.

21 During the course of the trial it has been
22 necessary for me to rule on the admission of evidence
23 and on motions made with respect to the applicable law.
24 You must not infer from any such ruling I have made or
25 from anything that I have said during the course of the

1 trial that I hold any view whatsoever on the issue of
2 whether the defendant is guilty or not guilty. Any
3 views of mine would in any event, would be totally
4 irrelevant since it is your recollection of the
5 evidence and your determination of the issues of fact
6 which control.

7 During the course of the trial, incidents may
8 have occurred which you were instructed to disregard
9 and to dismiss from your minds, and at times questions
10 were asked as to which objections were interposed and
11 sustained. Certain testimony was also stricken from
12 the evidence in this case. Whether these matters were
13 trivial or consequential is of no concern to you. For
14 they are simply not involved in this case and must not
15 impinge upon any part of your deliberations. You must
16 not be influenced by them, nor shall you draw any
17 inferences with respect to any of them. You must
18 decide the case solely upon the competent evidence
19 before you, and determine the issues on what you
20 believe to be the credible evidence.

21 I might add parenthetically, if your
22 recollection of certain testimony should fail, or if
23 you find yourself in doubt as to any of my instructions
24 on the law, it's your privilege, if you so desire, to
25 return to the Court for the purpose of having such

1 testimony or instructions read to you. However, please
2 understand that it may take a period of time for the
3 court reporter to locate that which is to be read to
4 you, and therefore, there may be a delay from the time
5 you send in a note until you hear the read back.

6 In addition, you may request to see in the
7 jury room any exhibits that have been introduced into
8 evidence at this trial.

9 I call to your attention that a number of
10 items have been referred to and/or marked for
11 identification, but have not been received in evidence
12 as exhibits. Since they are not evidence, they cannot
13 be considered by you, and therefore, will not be
14 submitted to you. I repeat, however, that those
15 exhibits which have been admitted into evidence, are
16 available to you upon a written request.

17 We now turn to the fundamental principles of
18 our law that apply in all criminal trials. The
19 presumption of innocence, the burden of proof and the
20 requirement of proof beyond a reasonable doubt.

21 Throughout these proceedings, the defendant
22 is presumed to be innocent. As a result, you must find
23 the defendant not guilty unless on the evidence
24 presented at this trial, you conclude that the People
25 have proven the defendant guilty beyond a reasonable

1 doubt. The defendant is not required to prove that he
2 is not guilty. In fact, the defendant is not required
3 to prove or disprove anything.

4 During the People's summations, you may have
5 heard Mr. Perri restate that the defense could have had
6 his expert test the underwear in this case. Although,
7 not evidence, that statement is to be disregarded by
8 you. As you know, because I have just told you, the
9 defendant is not required to prove or disprove
10 anything. To the contrary, the People have the burden
11 of proving the defendant guilty beyond a reasonable
12 doubt. That means before you can find the defendant
13 guilty of a crime, the People must prove beyond a
14 reasonable doubt every element of the crime, including
15 that the defendant is the person who committed that
16 crime.

17 I charge you that the burden of proof never
18 shifts from the People to the defendant. If the People
19 fail to satisfy their burden of proof, you must find
20 the defendant not guilty. If the People satisfy their
21 burden of proof, you must find the defendant guilty.

22 Now, what does our law mean when it requires
23 proof of guilt beyond a reasonable doubt? The law uses
24 the term proof beyond a reasonable doubt to tell you
25 how convincing the evidence of guilt must be to permit

1 a verdict of guilty. The law recognizes in dealing
2 with human affairs there are very few things in this
3 world that we know with absolute certainty. Therefore,
4 the law does not require the People to prove the
5 defendant guilty beyond a reasonable doubt. On the
6 other hand, it's not sufficient to prove that the
7 defendant is probably guilty.

8 In a criminal case, the proof of guilt must
9 be stronger than that. It must be beyond a reasonable
10 doubt. A reasonable doubt is an honest doubt of the
11 defendant's guilt for which a reason exists based upon
12 the nature and quality of the evidence.

13 It is an actual doubt, not an imaginary
14 doubt. It is a doubt that a reasonable person acting
15 in a matter of this importance would be likely to
16 entertain because of the evidence that was presented or
17 because of the lack of convincing evidence. Proof of
18 guilt beyond a reasonable doubt is proof that leaves
19 you so firmly convinced of the defendant's guilt that
20 you have no reasonable doubt of the existence of any
21 element of the crime, or of the defendant's identity as
22 the person who committed the crime.

23 In determining whether or not the People have
24 proven the defendant's guilt beyond a reasonable doubt,
25 you should be guided solely by a full and fair

1 evaluation of the evidence. After carefully evaluating
2 the evidence, each of you must decide whether or not
3 that evidence convinces you beyond a reasonable doubt
4 of the defendant's guilt. Whatever your verdict may
5 be, it must not rest upon baseless speculations. Nor,
6 may it be influenced in any way by bias, prejudice, or
7 sympathy, or by a desire to bring an end to your
8 deliberations, or to avoid an unpleasant duty.

9 If you are not convinced beyond a reasonable
10 doubt that the defendant is guilty of a charged crime,
11 you must find the defendant not guilty of that crime.
12 If you are convinced beyond a reasonable doubt that the
13 defendant is guilty of a charged crime, you must find
14 the defendant guilty of that crime.

15 As judges of the facts you, alone, determine
16 the truthfulness and accuracy of the testimony of each
17 witness. You must decide whether a witness told the
18 truth and was accurate, or instead testified falsely or
19 was mistaken.

20 You must also decide what importance to give
21 to the testimony you accept as truthful and accurate.
22 It is the quality of the testimony that is controlling,
23 not the number of witnesses who testify.

24 If you find that any witness has
25 intentionally testified falsely as to any material

1 fact, you may disregard that witness's entire
2 testimony, or you may disregard so much of it as you
3 found was untruthful and accept so much of it as you
4 find to have been given truthfully and accurately.

5 There is no particular formula for evaluating
6 the truthfulness and accuracy of another person's
7 statements or testimony. You bring to this process all
8 of your varied experiences. In life you frequently
9 decide the truthfulness and accuracy of statements made
10 to you by other people. The same factors used to make
11 those decisions should be used in this case when
12 evaluating the testimony.

13 Some of the factors that you may wish to
14 consider in evaluating the testimony of a witness are
15 as follows:

16 Did the witness have an opportunity to see or
17 hear the events about which he or she testified? Did
18 the witness have the ability to recall those events
19 accurately? Was the testimony of the witness plausible
20 and likely to be true, or was it implausible and not
21 likely to be true? Was the testimony of the witness
22 consistent or inconsistent with other testimony or
23 other evidence in the case? Did the manner in which
24 the witness testified reflect upon the truthfulness of
25 that witness's testimony? To what extent, if any, did

1 the witness's background, training, education, or
2 experience affect the believability of that witness's
3 testimony? Did the witness have a bias, hostility or
4 some other attitude that affected the truthfulness of
5 the witness's testimony?

6 You may consider whether a witness had or did
7 not have a motive to lie. If a witness had a motive to
8 lie, you may consider whether and to what extent, if
9 any, that motive effected the truthfulness of that
10 witness's testimony. If a witness did not have a
11 motive to lie, you may consider that as well in
12 evaluating the witness's truthfulness.

13 You may consider whether a witness has any
14 interest in the outcome of the case. Or instead,
15 whether the witness has no such interest. You are not
16 required to reject the testimony of an interested
17 witness or to accept the testimony of a witness who has
18 no interest in the outcome of the case. You may,
19 however, consider whether an interest in the outcome or
20 the lack of such interest affected the truthfulness of
21 the witness's testimony.

22 You may consider whether a witness has
23 engaged in criminal conduct, and if so, whether and to
24 what extent it effects the truthfulness of that
25 witness's testimony. You are not required to reject

1 the testimony of a witness who has engaged in criminal
2 conduct or to accept the testimony of a witness who has
3 not. You may, however, consider whether a witness's
4 criminal conduct has effected the truthfulness of the
5 witness's testimony.

6 You may consider whether a witness made
7 statements at this trial that are inconsistent with
8 each other. You may also consider whether a witness
9 made previous statements that are inconsistent with his
10 or her testimony at trial. You may consider whether a
11 witness testified to a fact here at trial that
12 witnesses omitted to state a prior time when it would
13 have been reasonable and logical for the witness to
14 have stated the fact.

15 In determining whether it would have been
16 reasonable and logical for the witness to have stated
17 the omitted fact, you may consider whether the
18 witness's attention was called to the matter and
19 whether the witness was specifically asked about it.

20 If a witness has made such inconsistent
21 statements or omissions, you may consider whether and
22 to what extent they affect the truthfulness or accuracy
23 of that witnesses's testimony here at this trial.

24 MR. PERRI: May we approach?

25 THE COURT: Step up.

1 (Whereupon, there was a sidebar discussion
2 with the Court and counsel, as follows:)

3 MR. PERRI: I don't know. I don't know if it
4 was intentional, but in the CJT, as the defendant has
5 testified in a trial, there is the instruction that the
6 defendant is an interested witness and you didn't say
7 that.

8 (Whereupon, the proceedings resumed.)

9 THE COURT: The contents of a prior
10 inconsistent statement are not proof of what happened.
11 You may use evidence of a prior inconsistent statement
12 only to evaluate the truthfulness or accuracy of the
13 witness's testimony here at trial. You may consider
14 whether a witness's testimony is consistent with the
15 testimony of other witnesses or with other evidence in
16 the case.

17 If there were inconsistencies by or among
18 witnesses, you may consider whether they were
19 significant inconsistencies related to important facts,
20 or instead were the kind of minor inconsistencies that
21 one might expect from multiple witnesses to the same
22 event.

23 In this case you have heard the testimony of
24 a police officer and detectives. The testimony of a
25 witness should not be believed solely and simply

1 because the witness is a police officer or a detective.
2 At the same time, a witness's testimony should not be
3 disbelieved solely and simply because the witness is a
4 police officer or a detective. You must evaluate a
5 police officer's or detective's testimony in the same
6 way you would evaluate the testimony of any other
7 witness.

8 You have heard testimony about the
9 prosecutor, or a lawyer, or an investigator speaking to
10 a witness about the case before the witness testified
11 at this trial. The law does not prohibit a party from
12 speaking to a witness about the case before the witness
13 testifies. Nor does it prohibit the prosecutor, or a
14 lawyer, or an investigator from reviewing with the
15 witness the questions that will be asked at trial.

16 You have also heard testimony that a witness
17 read certain materials pertaining to the case before
18 the witness testified at trial. The law does not
19 prohibit a witness from doing so.

20 Now, although not required to do so, the
21 defendant in this case testified in his own behalf.
22 His testimony should be considered by you as you would
23 the testimony of any other witness. The defendant is,
24 of course, an interested witness, interested in the
25 outcome of the trial. You may, as jurors wish to keep

1 such interest in mind, in determining the weight and
2 credibility to be given to his testimony. You should
3 not, however, reject the testimony of the defendant
4 merely because of his interest. It is your duty, as in
5 the case of all witnesses, to accept such testimony of
6 the defendant as you believe to be truthful and reject
7 only such testimony as you believe to be false.

8 You will recall that you heard testimony from
9 experts in the area of DNA and an expert in child
10 sexual abuse and sexual penetration called by the
11 People, and an expert in the area of DNA called by the
12 defense; all who testified about certain matters and
13 gave opinions on those matters. Ordinarily, a witness
14 who is testifying about facts and is not permitted to
15 give an opinion, where, however, scientific, medical,
16 technical or other specialized knowledge will help the
17 jury understand the evidence or to determine a fact in
18 issue. A witness with expertise in a specialized field
19 may render opinions about such matters. You should
20 evaluate the testimony of any such witness just as you
21 would the testimony of any other witness. You may
22 accept or reject such testimony in whole or in part,
23 just as you may with respect to the testimony of any
24 other witness.

25 In deciding whether or not to accept such

1 testimony, you should consider the following: The
2 qualification and believability of the witness, the
3 facts and circumstances upon which the witness's
4 opinion was based, the accuracy or inaccuracy of any
5 assumed or hypothetical fact upon which the opinion is
6 based, the reasons given for the witness's opinion and
7 whether the witness's opinion is consistent or
8 inconsistent with other evidence in the case.

9 I will now discuss the law as it relates to
10 testimony concerning statements the defendant made to
11 the police.

12 Our law does not require that a statement by
13 a defendant be in any particular form. It may be oral,
14 or written. There is no requirement that a statement
15 be made under oath.

16 Under our law, before you may consider any
17 such statement as evidence in this case, you must first
18 be convinced that the statement attributed to the
19 defendant was, in fact, made or adopted by him. In
20 determining whether the defendant made or adopted the
21 statement, you may apply the tests of believability and
22 accuracy that we have already discussed.

23 A defendant adopts a statement when he
24 knowingly acknowledges the contents of the statement as
25 his own. A statement in written form need not have

1 been written by the defendant provided that the
2 defendant adopted the statement. Also, under our law,
3 even if you find the defendant made a statement, you
4 may still not consider it as evidence in the case,
5 unless the People have proven beyond a reasonable doubt
6 that the defendant made the statement voluntarily.

7 How do you determine whether the People have
8 proven beyond a reasonable doubt that the defendant
9 made a statement voluntarily? Two ways:

10 One, there is testimony that while the
11 defendant was in custody he was questioned by the
12 police and made certain statements, including an
13 apology letter. With respect to the alleged written
14 statement of admission and the apology letter, under
15 our law, before a person in custody may be questioned
16 by the police, that person first must be advised of his
17 rights.

18 Second, he must understand those rights.

19 And third, must voluntarily waive those
20 rights and agree to speak to the police.

21 If any one of those three conditions is not
22 met, a statement made in response to questioning is not
23 voluntary, and therefore, you must not consider it.
24 There is no particular point in time that the police
25 are required to advise the defendant in custody of his

1 rights, so long as they do so before questioning
2 begins.

3 A defendant in custody need be advised only
4 once of the rights, regardless of how many times or to
5 whom the defendant speaks after having been so advised,
6 provided that the defendant is in continuous custody
7 from the time he was advised of his rights to the time
8 he was questioned, and there was no reason to believe
9 that the defendant had forgotten or no longer
10 understood his rights.

11 While there are no particular words that the
12 police are required to use in advising the defendant,
13 in sum and substance, the defendant must be advised,
14 one, that he has the right to remain silent.

15 Two, that anything he says may be used
16 against him in a court of law.

17 Three, that he has the right to consult with
18 the lawyer before answering any questions, and the
19 right to the presence of a lawyer during any
20 questioning.

21 And four, that if he cannot afford a lawyer,
22 one will be provided for him prior to any questioning,
23 if he so desires.

24 Before you may consider as evidence a
25 statement made by the defendant in response to

1 questioning, you must find beyond a reasonable doubt
2 that the defendant was advised of his rights,
3 understood those rights, and voluntarily waived those
4 rights and agreed to speak to the police. If you do
5 not make those findings, then you must disregard the
6 statement and not consider it.

7 With respect to both the oral statement made
8 to the police before being taken into custody, and the
9 written statement and apology letter after the
10 defendant was taken into custody, under our law, a
11 statement is not voluntary if it is obtained from the
12 defendant by the use or threatened use of physical
13 force upon the defendant.

14 In addition, a statement is not voluntary if
15 it is obtained by means of any other improper conduct
16 or undue pressure which impairs the defendant's
17 physical or mental condition to the extent of
18 undermining his ability to make a choice whether or not
19 to make a statement.

20 In considering whether a statement was
21 obtained by any means of improper conduct or up undue
22 pressure which impaired the defendant's mental
23 condition or extent of undermining his mental
24 condition, of whether or not to make a statement, you
25 may consider such factors as the defendant's age,

1 intelligence, and physical and mental condition, and
2 the conduct of the police during their contact with the
3 defendant, including, for example, the number of
4 officers questioning the defendant, the manner in which
5 the defendant was questioned, the defendant's treatment
6 during the period of detention and questioning, and the
7 length of time the defendant was questioned. It is for
8 you to evaluate and weigh the various factors to
9 determine whether or not in the end a statement was
10 obtained by means of any improper conduct or undue
11 pressure which impaired the defendant's physical or
12 mental condition to the extent of undermining his or
13 her ability to make a choice of whether or not to make
14 a statement.

15 If the People have not proven beyond a
16 reasonable doubt that a statement of the defendant was
17 voluntarily made, then you must disregard the statement
18 and not consider it. If the People have proven beyond
19 a reasonable doubt that a statement of the defendant
20 was voluntarily made, then you may consider that
21 statement as evidence and evaluate it as you would any
22 other evidence.

23 Under our law, a person may not be convicted
24 of an offense solely upon evidence of a confession or
25 admission made by that person without additional proof

1 that offense charged has been committed. This law is
2 designed to make sure that a person is not convicted
3 upon his own words of a crime that did not take place.
4 Thus, you may not convict the defendant solely on his
5 own statements. There must be some additional proof
6 that the crimes charged were committed.

7 Now, there are two types of evidence, namely
8 direct evidence and circumstantial evidence. Let me
9 explain what constitutes a direct and circumstantial
10 evidence and how they differ.

11 Direct evidence is evidence of a fact based
12 on a witness's personal knowledge or observation of
13 that fact. A person's guilt of a charged crime may be
14 proven by direct evidence, if standing alone that
15 evidence satisfies a jury beyond a reasonable doubt of
16 the person's guilt of that crime.

17 Circumstantial evidence is direct evidence of
18 a fact from which a person may reasonably infer the
19 existence or nonexistence of another fact. A person's
20 guilt of a charged crime may be proven by
21 circumstantial evidence if that evidence, while not
22 directly, establishes guilt, gives rise to an inference
23 of guilt beyond a reasonable doubt.

24 Let me give you an example of the difference
25 between direct evidence and circumstantial evidence.

1 Suppose in a trial one of the parties is trying to
2 prove it was raining on a certain morning. A witness
3 testifies that on that morning she walked to the
4 subway, and as she walked, she saw rain falling. She
5 felt it striking her face and heard it slashes on the
6 sidewalk. That testimony of the witness's perception
7 would be direct evidence that it rained on that
8 morning. The question for the jury would then be
9 whether the jury found the testimony truthful and
10 accurate, beyond a reasonable doubt.

11 Suppose, on the other hand, the witness
12 testified that it was clear as she walked to the
13 subway, that she went into the subway and got on the
14 train and that while she was on the train she saw
15 passengers come in at one station after another,
16 carrying wet umbrellas and wearing wet clothes and rain
17 coats. That testimony constitutes direct evidence of
18 what the witness observed and because inference that it
19 was raining in the area would flow naturally,
20 reasonably, and logically from that direct evidence,
21 the witness's testimony would constitute circumstantial
22 evidence that it was raining in the area.

23 The law draws no distinction between
24 circumstantial evidence and direct evidence in terms of
25 its weight or importance. The type of evidence may be

1 enough to establish guilt beyond a reasonable doubt
2 depending upon the facts of the case, as the jury finds
3 them to be.

4 Now, in this case, witnesses testified about
5 the defendant's reputation in the community for
6 kindness and gentleness towards children. Such
7 evidence was offered to establish that the defendant is
8 of such character to make it unlikely that he committed
9 the crimes charged.

10 Under our law, evidence of good character,
11 even if believed, does not excuse criminal conduct, if
12 that conduct is proven beyond a reasonable doubt. When
13 considered with all of the other evidence in the case,
14 however, evidence of good character makes it rise to a
15 reasonable doubt where without it, none would exist.

16 If evidence of good character, when
17 considered with all of the other evidence in the case
18 raises a reasonable doubt of the defendant's guilt,
19 then you must find the defendant not guilty. On the
20 other hand, if you are satisfied that the defendant's
21 guilt has been proven beyond a reasonable doubt,
22 notwithstanding the evidence of his good character,
23 then you must find the defendant guilty.

24 Now, we come to the second part of my charge,
25 which as I told you at the outset, I will instruct you

1 on the material legal principles applicable to the
2 crimes with which the defendant is charged. And then I
3 will briefly explain the application of law to the
4 facts upon which you will be required to deliberate and
5 render your verdict. I also reiterate my admonitions
6 that you are to draw no inference whatsoever from my
7 reference or lack of reference to any of the testimony,
8 or other evidence as indicative of any opinion on my
9 part as to credibility, weight or importance of any
10 evidence in this case.

11 Members of the jury, you will notice some of
12 the definitions are the same and apply to more than one
13 count of the indictment. Although, I may give that to
14 you only once you are to consider the crimes charged in
15 each count separately and apply those instructions
16 wherever it is applicable.

17 The first count is criminal sexual act in the
18 first degree.

19 Under our law, a person is guilty of criminal
20 sexual act in the first degree when he engages in oral
21 sexual conduct with another person who is less than
22 eleven years old.

23 Under our law it is also an element of this
24 offense that the oral sexual conduct was committed
25 without the consent of that other person. Oral sexual

1 conduct takes place without a person's consent when
2 that person is deemed by law to be incapable of
3 consent. Under our law, a person is deemed incapable
4 of consenting to oral sexual conduct when she is less
5 eleven years old.

6 Thus, the law deems oral sexual conduct with
7 such a person to be without that person's consent even
8 if, in fact, that person did consent. It is not a
9 defense to this charge that the actor did not know that
10 person with whom the actor had oral sexual conduct, was
11 less than eleven years old or that actor believed that
12 such person was eleven years old or more on the date of
13 the crime.

14 The term oral sexual conduct used in the
15 definition of this crime has its own special meaning in
16 our law. I will now give you the meaning of this term.

17 Oral sexual conduct means conduct between
18 persons consisting of contact between the mouth and the
19 penis, the mouth and the anus, or the mouth and the
20 vulva or vagina.

21 In order for you to find the defendant guilty
22 of this crime, the People are required to prove from
23 all of the evidence in this case, beyond a reasonable
24 doubt, both of the following two elements:

25 One, that on or about October 16, 2013, in

1 the County of Nassau, the defendant, Daniel Ramos,
2 engaged in oral sexual conduct with Mya Feliciano
3 Ramirez.

4 And two, that Mya Feliciano Ramirez was less
5 than eleven years old. Therefore, if you find that the
6 People have proven beyond a reasonable doubt both of
7 those elements, you must find the defendant guilty of
8 the crime of criminal sexual act in the first degree as
9 charged in the first count.

10 On the other hand, if you find that the
11 People have not proven beyond a reasonable doubt either
12 one or both of those elements, you must find the
13 defendant not guilty of the crime of criminal sexual
14 act in the first degree as charged in the first count.

15 The second count is endangering the welfare
16 of a child.

17 Under our law, a person is guilty of
18 endangering the welfare of a child when that person
19 knowingly acts in manner likely to be injurious to the
20 physical, mental, or moral welfare of a child less than
21 seventeen years old.

22 The term knowingly has its own special
23 meaning in our law. I'll now give you the meaning of
24 that term.

25 A person knowingly acts in a manner likely to

1 be injurious to the physical, mental, moral welfare of
2 a child when that person is aware that he is acting in
3 such a manner actual harm to the child need not result.
4 The defendant must act in a manner which is likely to
5 be injurious to the physical, mental, moral welfare of
6 a child, knowingly of the likelihood of such injury.

7 Knowledge of the age of the child is not an
8 element of this crime, and it is not a defense to this
9 charge that the defendant did not know the age of the
10 child or believed the age of the child to be seventeen
11 years or more.

12 In order for you find the defendant guilty of
13 this crime, the People are required to prove from all
14 of the evidence in this case, beyond a reasonable
15 doubt, each of the following three elements:

16 One, that on or about October 16, 2013, in
17 the County of Nassau, the defendant, Daniel Ramos acted
18 in a manner likely to be injurious to the physical,
19 mental, or moral welfare of Mya Feliciano Ramirez.

20 Two, that the defendant did so knowingly.

21 And three, that Mya Feliciano Ramirez was
22 less than seventeen years old.

23 Therefore, if you find that the People have
24 proven beyond a reasonable doubt each of those
25 elements, you must find the defendant guilty of the

1 crime of endangering the welfare of a child as charged
2 in the second count.

3 On the other hand, if you find the People
4 have not proven beyond a reasonable doubt any one or
5 more of those elements, you must find the defendant not
6 guilty of the crime of endangering the welfare of a
7 child as charged in the second count.

8 We now reached that part of my charge dealing
9 with the process of deliberations. Your verdict on
10 each count you consider, whether guilty or not guilty,
11 must be unanimous. That is, each and every juror must
12 agree to it. No one expects all jurors will have the
13 same view of the case when they first enter the jury
14 room. To reach a unanimous verdict, you must
15 deliberate with the other jurors. That means you
16 should discuss the evidence and consult with each
17 other, listen to each other, give each other's views
18 careful consideration and reason together when
19 considering the evidence. And when you deliberate, you
20 should do so with a view towards reaching an agreement
21 if that can be done without surrendering individual
22 judgment.

23 Each of you must decide the case for
24 yourself, but only after a fair and impartial
25 consideration of the evidence with the other jurors.

1 You should not surrender an honest view of
2 the evidence simply because you want the trial to end
3 or you are outvoted. At the same time you should not
4 hesitate to reexamine your views and change your mind
5 if you become convinced that your position was not
6 correct.

7 In other words, ladies and gentlemen, when
8 you enter the jury room, you may have individually
9 reached certain tentative opinions and conclusions.
10 Before finalizing those opinions and conclusions, you
11 should deliberate with the other jurors. You should be
12 open to reason and be willing either to adhere to your
13 opinion and conclusion if persuaded you are correct, or
14 to change your opinions for conclusion if persuaded you
15 are not correct. To the best of your ability, I ask
16 you to apply common sense and good judgment. Do not
17 let fear, favor, sympathy, bias, prejudice,
18 consideration of possible sentence or punishment sway
19 your minds in any way in analyzing the testimony.
20 Decide this case, as you have promised, fairly on the
21 evidence and on the law, whether you agree with the law
22 or not.

23 You may see any or all of the exhibits which
24 were received in evidence. Simply write me a note
25 telling me which exhibit or exhibits you want to see.

1 Certain evidence will be immediately available to you.
2 Other evidence can be viewed by you. Please write a
3 note asking for any evidence not otherwise available to
4 you.

5 You may also have the testimony of any
6 witness read back to you in whole or in part. Again,
7 if you want a read back, write me a note telling me
8 what testimony you wish to hear. If you are interested
9 in hearing only a portion of what a witness's testimony
10 was, please specify it in your note which witness and
11 with as much detail as possible which part of the
12 testimony you want to hear back.

13 Of course, when testimony is read back,
14 questions to which an objection was sustained and
15 material otherwise struck from the record, is not read
16 back to you. If you have a question on the law, write
17 me a note, specify what you want me to review with you.

18 Now, under our law the first juror selected
19 is known as the foreperson. During deliberations, the
20 foreperson's opinion and vote are not entitled to
21 anymore importance than that of any other juror. What
22 we ask the foreperson to do during deliberations is to
23 sign any written note that the jury sends to the Court.
24 The foreperson does not have to write the note or agree
25 with its contents. The foreperson's signature only

1 indicates that the writing comes from the jury.

2 The foreperson may, but does not have to
3 chair the jury's discussions during deliberations.
4 When the jury reached a verdict, guilty or not guilty,
5 the entire jury will be asked to come to court. The
6 foreperson will be asked whether the jury has reached a
7 verdict. If the foreperson says yes, he will be asked
8 what the verdict is for each charged crime. After
9 that, the entire jury will be asked whether that is
10 their verdict and will answer yes or no.

11 Finally, upon the request of the interested
12 party, each juror will be asked individually whether
13 the announced verdict is the verdict of that juror.
14 Upon being asked, each juror will answer yes or no
15 individually. I will give you a form known as a
16 verdict sheet when you retire to your deliberations.
17 The verdict sheet lists the counts submitted for your
18 consideration and the possible verdicts. Please use
19 the form to record your verdict with an X or a
20 checkmark in the appropriate place for each count you
21 consider in accordance with my instructions.

22 Finally, there are a few remaining rules
23 which you must observe during deliberations.

24 One, while you are here in the courthouse
25 deliberating on the case, you will be sequestered.

1 Meaning, you will be kept together in the jury room
2 under the supervision of a court officer. You may not
3 leave the jury room without permission. And if you
4 have a cell phone or other electronic device, you will
5 be asked to please give it to the court officer to hold
6 for you while you are engaged in deliberations.

7 You must deliberate about the case only when
8 you are all gathered together in the jury room. You
9 must not, for example, be discussing the case as you go
10 to and from the courtroom. Thus, for any reason all
11 twelve of you are not gathered together in the jury
12 room, please stop deliberating until all twelve are
13 again present in the jury room.

14 During your deliberations you must only
15 discuss the case amongst yourselves. You must not
16 discuss the case with anyone else, including a court
17 officer or permit anyone other than a fellow juror to
18 discuss the case in your presence. If you may have a
19 question or request, you must communicate with me by
20 writing that note and signed by the foreperson. Give
21 the note to a court officer, who will in turn give it
22 to me. When the jury room door is opened, give the
23 court officer the note. Please stop deliberating until
24 the officer has left the room and the door is closed
25 again.

Proceedings

1591

1 In any note that you send me, do not tell me
2 what the vote of the jury is on any of the counts.
3 Every note will be answered. It may take a little time
4 to get back to you. If you can continue to work on
5 your deliberations without the note being answered,
6 please do so. Otherwise, please wait patiently until
7 we get the note answered. That concludes my
8 instructions. Before I excuse you, let me see the
9 attorneys at the bench.

10 (Whereupon, there was a sidebar discussion
11 with the Court and counsel, as follows:)

12 THE COURT: Any exceptions to the charge
13 before I release them?

14 MR. PERRI: No, your Honor.

15 MR. BERGER: No, your Honor.

16 THE COURT: Any additions to the charge
17 before I release them?

18 MR. PERRI: The only question -- the only
19 other question I had your Honor, was in the statement
20 that was prior to custody, that there -- just to
21 clarify that, the requirement of Miranda warnings were
22 just for the written statement.

23 MR. BERGER: You made it clear when you
24 charged that every -- when he was custody, that's when
25 the Miranda warnings are required and they could

1 consider any other statement. I think you covered the
2 point.

3 THE COURT: I want to make sure I read it
4 right. Give me one second.

5 MR. PERRI: If you feel you covered it, you
6 covered it.

7 THE COURT: I understand.

8 I even highlighted it to make sure I read it
9 slowly. What I read with respect to both the oral
10 statement made to the police before being taken into
11 custody and the written statement, the apology letter
12 after the defendant was taken into custody, I go on to
13 say what is needed or not needed. Although, it might
14 not have been artfully put forth as the People want, I
15 do feel it's been covered. I'm not going to say
16 anything additional at this time.

17 I'm going to assume we're going to release
18 the only one alternate remaining.

19 MR. BERGER: No, I'm not releasing her.

20 THE COURT: Okay. I assumed you are
21 releasing.

22 MR. BERGER: No I'm not.

23 THE COURT: You might agree to substitute, if
24 that becomes necessary.

25 MR. BERGER: Absolutely.

Proceedings

1593

1 THE COURT: I want to give her instructions
2 then. I will retire the first twelve to start their
3 deliberations. I will then give this instruction to
4 the alternate juror, and let her know she will be
5 sitting alone reading a book. We'll let her know and
6 if and when she could leave.

7 MR. PERRI: Yes, your Honor. Thank you.

8 (Whereupon, the proceedings resumed.)

9 THE COURT: The twelve sworn jurors are now
10 free to go to the jury room and start your
11 deliberations once that door is closed.

12 If the alternate could please wait.

13 (Whereupon, the jury exited the courtroom and
14 began deliberations.)

15 THE COURT: All right, since our jury of
16 twelve is about to begin its deliberations, I now
17 charge you that and I emphasize that there must be no
18 further communication or contact between the trial jury
19 of twelve and my one remaining alternate juror. You
20 will be provided with a convenient and private place to
21 await the rendition of the trial jury's verdict.

22 I, again, admonish you that you are not to
23 discuss this case with anyone at this time. You may
24 not read anything about this case. You are not allowed
25 to have anyone discuss the case in your presence. You

1 are not allowed to talk to the lawyers or the
2 defendant, or the witnesses about anything during this
3 time that you are waiting. You may not form an opinion
4 as to any factual issues, nor are you to form or
5 express any opinion as to the guilt or innocence of the
6 defendant unless and until such time as you are either
7 released from this court for your services or requested
8 to participate in the trial jury's deliberations. Do
9 you understand my instructions to you?

10 ALTERNATE JUROR ONE: Yes, I do.

11 THE COURT: Hopefully you brought a book or
12 something you could read. You may now may retire to a
13 private place.

14 (Whereupon, the alternate exited the
15 courtroom.)

16 THE COURT: Let me ask the attorneys, is
17 there any evidence you would agree to send into the
18 jury now, or would you refer prefer to wait for notes?

19 MR. BERGER: Judge, at this point, I consent
20 to giving the jury the exhibits that they asked for,
21 all or part. I don't think it's necessary for you to
22 call us back. If that's what you want to do, we'll do
23 it. Normally when I'm asked, I consent to the exhibits
24 being given. We say yes. It doesn't require the
25 attorneys to be present.

Proceedings

1595

1 THE COURT: What I want to make sure, I heard
2 you consent to the jury giving the exhibits that they
3 asked for without calling the parties back in, correct?

4 MR. BERGER: Correct.

5 THE COURT: We will wait for them to ask for
6 the exhibits. I won't call you back in to provide them
7 with those exhibits, but when we are all gathered
8 again, I'll obviously make you both aware of what they
9 requested and what is being sent to them.

10 MR. PERRI: The People have no problem with
11 providing them exhibits or waiting for them to request
12 for the exhibits in either situation. It is not
13 required we be present.

14 MR. BERGER: Should we leave them in the
15 courtroom?

16 THE CLERK: I'll go over with you the
17 exhibits so everybody can see what I'm taking
18 possession of to confirm it is marked in evidence and
19 that as soon as we're done with that, I'll take
20 possession of it and you are free to leave.

21 MR. PERRI: Thank you.

22 (Whereupon, a recess was taken.)

23 * * *

24

25

1 THE CLERK: Case on trial continued,
2 Indictment 742N of 2014, People of the State of New
3 York vs. Daniel Ramos.

4 Let the record reflect all parties are
5 present. The jury is not present at this time.

6 Are the People ready?

7 MR. PERRI: Yes, your Honor.

8 MR. BERGER: Yes, your Honor.

9 THE COURT: We received a note from the jury.
10 It's been marked Court Exhibit Number XI. You both
11 read it, but I'll read it into the record.

12 We, the jury, would like to hear the
13 transcript of Crystal's testimony, the part when she
14 walks in the kitchen and sees Danny with Mya. Mya's
15 testimony when Crystal walked in. Daniel's testimony
16 when Crystal walked in.

17 It is now ten to one. I need to send the
18 jury to lunch at this point, so that will give
19 everybody the lunch hour to determine if you have any
20 of the minutes transcribed, what portion you think
21 should be read back. I'll ask that everyone be back
22 here in the courtroom by 2:15 sharp so we can determine
23 if there is an agreement on what should be read back.
24 If not, the Court will make the ultimate decision as to
25 what will be read back. It will include, direct and

1 cross of each witness with regards to these requests,
2 and we'll call the jury now to release them for lunch.

3 MR. BERGER: Were the exhibits asked for?

4 THE COURT: Obviously, it will be in the
5 rounds of direct and cross, redirect, recross,
6 re-redirect, if that should exist.

7 MR. PERRI: Understood.

8 THE COURT: While waiting for the jury to be
9 brought into the courtroom, we received another note.
10 It is marked Court Exhibit Number XII. I will give you
11 each a chance to look at it in a moment. I'll read it
12 into the record.

13 We, the jury, would like to hear the 911
14 call from Crystal or the transcript, if it was on
15 record. If it's on the record, can we see slash hear
16 it. The forensic report that shows Daniel Ramos's DNA
17 from the stains, the layout of the apartment from
18 Crystal, the apology from Daniel Ramos, the statement
19 given to Detective Baran.

20 With regards to this note, upon their return
21 from lunch, we will provide them with the physical
22 exhibits so they will get the forensic report related
23 to -- the forensic report from the DNA. They'll get
24 the entire reports. We'll give them the apology letter
25 and give them the statement that was given to Detective

1 Baran. Those will be handed to them immediately over
2 the lunch break, while you are looking for the other
3 testimony they already sought. Please look for the
4 testimony that deals with the layout of the apartment,
5 as testified to by Crystal, if that exists. And I will
6 advise them that they are -- that the 911 call itself,
7 and/or any transcript of the call are not part of the
8 evidence and --

9 MR. BERGER: They are.

10 THE COURT: Listen to what they asked for.
11 They want to hear the 911 call. That's not in
12 evidence.

13 MR. BERGER: I understand.

14 THE COURT: They want a transcript of the 911
15 call. That is not in evidence.

16 MR. BERGER: Judge, what I did hear, which I
17 think they're asking for, I asked her after she came,
18 after we played the 911 call for her, then I asked her,
19 did you say the following in the 911, and she answered
20 it.

21 THE COURT: If they're looking for testimony,
22 they'll write another note seeking testimony. This
23 note asks for either to hear the 911 call. It's not in
24 evidence, or to see a transcript of the call. There's
25 no transcript of the call in evidence. It's a very

1 specific note. It will be answered that way, if they
2 want something else, they can certainly ask for it.

3 MR. BERGER: I ask you to ask them, are you
4 looking for any testimony with respect to Crystal
5 having made reference to the transcript of the 911
6 call. That is what I think they're asking for. She
7 did acknowledge that she said certain things after
8 hearing the 911 call. That's all I'm asking you to ask
9 them, if they're looking for Crystal's reference to the
10 transcript.

11 THE COURT: I'm not going to ask them
12 anything. I'll answer their questions. They seem like
13 an intelligent group. After I answer their questions
14 and if they seek something else, they'll write another
15 note.

16 (Whereupon, the jury entered the courtroom.)

17 THE CLERK: Both sides stipulate all sworn
18 jurors are present and properly seated?

19 MR. PERRI: Yes, your Honor.

20 THE CLERK: Defense counsel?

21 MR. BERGER: Yes, your Honor.

22 THE COURT: Welcome back. I received two
23 notes from you. Members of the jury, give me one
24 moment.

25 The notes read as follows: The first note,

1 which we marked as Court Exhibit Number XI reads, we,
2 the jury, would like to hear the transcript of
3 Crystal's testimony, the part when she walks in the
4 kitchen and sees Danny with Mya. Mya's testimony when
5 Crystal walked in. Daniel's testimony when Crystal
6 walked in.

7 The second note we received from you, which
8 is marked Court Exhibit number XII reads as follows:
9 We, the jury, would like to hear the 911 call from
10 Crystal or the transcript if it was on record. If it's
11 on record, can we see slash hear it? Forensic report
12 that shows Daniel Ramos's DNA from the stains, layout
13 of apartment from Crystal, apology letter from Daniel
14 Ramos, statement given to Detective Baran.

15 With regards to the second note, and your
16 request for the forensic reports, and the apology
17 letter and the statement, you will receive that when
18 you come back from your lunch break. That will be
19 brought into the deliberating room with you.

20 With regards to your request to hear the 911
21 call from Crystal or the transcript, if it was on the
22 record, another 911 call or the transcript of that call
23 is part of the evidence in this case. We will, after
24 lunch, give you the read backs you requested related to
25 the first note and the part of the second note that

1 asks for the layout of the apartment from Crystal.

2 Now, I'm addressing you at this point to
3 please stop deliberating over your lunch break.

4 Madam alternate, you are free to have lunch
5 with your fellow jurors because there will be no
6 deliberating over the lunch break.

7 Please remember to keep an open mind. Do not
8 discuss the case amongst yourselves or with anyone
9 else. Don't permit anyone to discuss the case in your
10 presence. Do not talk to the lawyers, witnesses or the
11 defendant about anything.

12 During this lunch break, don't get in your
13 cars and go visit the place where the alleged crime was
14 committed or any other place involved in the case. And
15 don't get on your phones to try to research or review
16 anything about this case over your lunch break. You
17 are no longer deliberating at this time.

18 Enjoy your lunch. Come back at 2:15. When
19 all twelve of you are back in the room, you may start
20 deliberating. Again, you do not have to wait for me to
21 tell you that, but all twelve of you must be present,
22 and we will call you into the courtroom as soon as we
23 have everything ready for you with regards to your
24 requests. Enjoy your lunch.

25 (Whereupon, the jury exited the courtroom.)

1 MR. BERGER: If you read the note again, you
2 see it says, see or hear the transcript. What they're
3 saying to you, that while there is no written
4 transcript for you to give them, there's never a
5 written transcript for you to give to the jury. That's
6 clear. It uses the word hear. They want to hear what
7 it was Crystal said when I questioned her about what
8 she had said on the 911 call.

9 Now, you can say they are a smart jury. The
10 jury gets confused. They don't remember all of the
11 testimony as clearly as counsel does. All I'm asking
12 you to do is, do you mean when you say hear, that you
13 want to hear the testimony given by Crystal with
14 respect to what she said on the 911 call? That would
15 clear this up. To me they say see and hear. If you
16 can't let them see the transcript, which we understand
17 they want to hear what the transcript -- what she said
18 -- she said on the 911 call.

19 THE COURT: So your request is noted for the
20 record. I understand what you are asking. I'm not
21 going to ask this jury any questions. If there is
22 something else they want from the Court, they will put
23 it in a note and let us know. See you at 2:15.

24 MR. BERGER: It gives the impression that it
25 doesn't exist. It does.

1 THE COURT: All I'm saying to you, it's not
2 this Court's job to ask questions that puts ideas or
3 thoughts into their head because then every time I get
4 a note, depending on who it helps or doesn't help, I
5 could start making colloquy with them. The way this
6 Court will handle this, is the way I handle it on every
7 other case, whether I've been sitting here or been an
8 attorney in this county. The questions in the note are
9 answered as they are asked. If there is something else
10 the jury wants, they will write another note.

11 MR. BERGER: I'm saying my experience has
12 been the judges ask the jury what they mean, what they
13 want.

14 THE COURT: Your position is noted for the
15 record. I appreciate that and I will see you all at
16 2:15.

17 (Whereupon, a luncheon recess was taken.)

18 * * *

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1 A F T E R N O O N S E S S I O N

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THE CLERK: Case on trial continued, People
of the State of New York vs. Daniel Ramos.

6

7

All parties are present. The jury is not
present at this time.

8

Are the People ready?

9

MR. PERRI: Yes, your Honor.

10

THE CLERK: Defense counsel ready?

11

MR. BERGER: Yes, your Honor.

12

13

14

THE COURT: Did you all have an opportunity
to go over the read back material to respond to the two
notes, People?

15

MR. PERRI: Yes, your Honor.

16

THE COURT: Mr. Berger?

17

18

MR. BERGER: The first note, just the first
note.

19

20

THE COURT: The second note asked for
testimony related to the layout of the apartment.

21

MR. BERGER: Yes, we went over that.

22

23

THE COURT: Any disagreement as to what is
going to be read back by the reporter?

24

MR. PERRI: No, your Honor.

25

MR. BERGER: Not what is going to be read

1 back, but I already read on the record my -- I'm asking
2 the Court to give the jury what they want and to send
3 them a question asking them, because normally we want
4 to accommodate the jurors. Ask them, do you mean this,
5 or do you mean that? I'm not saying you are putting
6 words in their mouths. Do you want Crystal's testimony
7 as to what she said in the 911? It's clearly in the
8 record. I remember that clearly. All I'm saying,
9 because again, can we see it because you can't, because
10 it's not a transcript. Can you hear it? They did
11 throw the word hear in there. Do you want Crystal,
12 what she said to the 911 operator. That's all I'm
13 asking you to ask them.

14 THE COURT: I appreciate your request and
15 understand your question, and I'm not going to do that.
16 I'm not going to ask the jurors any questions. I'm not
17 going to ask them to explain their notes. I answered
18 that question, and if they have follow-up questions,
19 they'll let the Court know.

20 (Whereupon, the jury entered the courtroom.)

21 THE CLERK: Do both sides stipulate all sworn
22 jurors are present and seated properly here?

23 MR. PERRI: Yes, your Honor.

24 MR. BERGER: Yes, your Honor.

25 THE COURT: Welcome back. I hope you enjoyed

1 your lunch. We're now going to have the read backs you
2 requested.

3 (Whereupon, the record was read back.)

4 THE COURT: All right, ladies and gentlemen,
5 all twelve jurors can go back and resume deliberations.

6 Alternate number one will go into the
7 separate room. Thank you.

8 (Whereupon, the jury exited the courtroom and
9 deliberations resumed.)

10 THE CLERK: Case on trial continued,
11 Indictment Number 742N of 2014, People of the State of
12 New York vs. Daniel Ramos.

13 Let the record reflect all parties are
14 present. The jury is not present at this time.

15 Are the People ready?

16 MR. PERRI: Yes, your Honor.

17 THE CLERK: Defense counsel ready?

18 MR. BERGER: Yes, your Honor.

19 THE COURT: We received another note from the
20 jury. We marked it Court Exhibit XIII. It reads as
21 follows: We, the jury, would like to see the rights
22 card. Sincere's testimony read back, and at what point
23 did he break down and cry. Detective Boccio's
24 conversation with Daniel Ramos referring to, quote, I
25 licked her once in the bedroom, close quote. We just

1 want to verify the statement.

2 It is now twenty after four. I've been
3 letting the jury leave by 4:30 each day. We will call
4 the jury in at this time. I will read the note into
5 the record again in their presence. We already sent
6 the rights card to them, so they have that. I would
7 advise them that tomorrow morning, as soon as they are
8 all gathered, we will read back Sincere's testimony and
9 indicate to them at what point he broke down and cried.
10 We'll have to look at the record, but I believe the
11 only way that would be indicated is when the Court
12 said, let's take a break.

13 MR. PERRI: Your Honor, I have a copy of the
14 transcript, and actually, Mr. Berger asked on page 145,
15 let the record reflect the witness is hanging his head
16 down. He seems upset. The Court says, yes. The
17 record should reflect the witness is crying.

18 THE COURT: We'll read all of his testimony
19 and normally we wouldn't read colloquy like that. We
20 will read those couple of sentences, and we will also
21 get Detective Boccio's testimony between now and
22 tomorrow morning related to the statement of Mr. Ramos.
23 I'll let them go for tonight and bring them in. I will
24 tell them to be back here at 10:00 a.m. tomorrow. I
25 ask the attorneys to be here at 9:45 so you can go

Proceedings

1608

1 through with regard to Detective Boccio, whatever needs
2 to be gone through. It appears they are asking for all
3 of Sincere's testimony, based on the way this is
4 written. I will advise them we will read his entire
5 testimony tomorrow morning, and then if that's wrong,
6 based on how they had written this note, they will let
7 us know.

8 MR. PERRI: Yes, your Honor.

9 MR. BERGER: Yes, your Honor.

10 (Whereupon, the jury entered the courtroom.)

11 THE CLERK: Do both sides stipulate all sworn
12 jurors are present, People?

13 MR. PERRI: Yes, your Honor.

14 THE CLERK: Defense counsel?

15 MR. BERGER: Yes, your Honor.

16 THE COURT: Good afternoon. We received your
17 note, which we marked as Court Exhibit XIII, which
18 reads as follows: We, the jury, would like to see the
19 rights card. Sincere's testimony read back. And at
20 what point did he break down and cry. Detective
21 Boccio's conversation with Daniel Ramos referring to
22 quote, I licked her once in the bedroom, close quote.
23 We just want to verify the statement.

24 We are going to get to this note more than
25 likely tomorrow morning, given the hour of the day.

1 Now, it's 4:25 in the afternoon. It is my
2 understanding we have already sent in the rights card.
3 That will be available to you again tomorrow when you
4 get here and resume your deliberations. Once everyone
5 is gathered up tomorrow morning, we will then bring you
6 into the courtroom and read back to you Sincere's
7 entire testimony, and we will indicate to you at what
8 point he broke down and cried, and then we will also
9 read back to you Detective Boccio's interaction with
10 Daniel Ramos referring to the statement that you put in
11 your note.

12 I'm going to ask that you all be back here
13 tomorrow morning at 10:00 a.m. Remember, once all
14 twelve of you are in the room and the door is closed,
15 you can resume your deliberations. Please do not
16 deliberate until all twelve of you are present in the
17 room.

18 To my alternate, please also be here at 10:00
19 a.m. You will go to the place where the officers
20 instruct you to go. At this point I'm asking you to --
21 I'm asking you and telling you that you must stop your
22 deliberations. You are being sent home for the
23 evening.

24 Please remember to keep an open mind through
25 the overnight. Do not discuss the case amongst

Proceedings

1610

1 yourselves or with anyone else. Do not permit anyone
2 to discuss the case in your presence. Do not talk to
3 the lawyers, witnesses, or the defendant about anything
4 during this overnight break.

5 Do not visit or view the place where the
6 charged crime was allegedly committed or any other
7 place involved in this case, and if there is any news
8 coverage of the case, do not read, view, or listen to
9 any accounts or discussions of the case reported by the
10 news media. And do not attempt to research any fact,
11 issue, or law related to this case, whether by
12 discussion with others, by research in the library, the
13 Internet, or by any other means or source.

14 Have a great evening. We'll see you tomorrow
15 at 10:00 a.m. sharp. Thank you.

16 (Whereupon, the jury exited the courtroom.)

17 THE COURT: If the attorneys can be here at
18 9:45 in the morning so you can go through the testimony
19 with the reporter.

20 MR. PERRI: Yes, your Honor.

21 MR. BERGER: Yes.

22 (Whereupon, the trial was adjourned to May
23 28, 2015.)

24 * * *

25

1611

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 43

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 742N/14

5 -against- :
:

6 DANIEL RAMOS, :
:

7 Defendant. :
-----X

8 May 28, 2015
9 262 Old Country Road
Mineola, New York

10

B E F O R E:

11

12 HONORABLE TERESA K. CORRIGAN,
Acting Supreme Court Justice

13

A P P E A R A N C E S:

14

(As Previously Noted)

15

16 * * * * *

17

18

19 THE CLERK: Case on trial continued,
20 Indictment Number 742N of 2014, People of the State of
21 New York vs. Daniel Ramos.

22 Let the record reflect all parties are
23 present, the jury is not present at this time.

24 Carmen Knight is the Spanish interpreter.

25 People, ready to proceed?

kmm

Proceedings

1612

1 MR. PERRI: Yes, your Honor.

2 THE CLERK: Defense counsel?

3 MR. BERGER: Yes, I have an application,
4 though. Madam clerk, may I have the exhibit.

5 I'm going to be making a motion for a
6 mistrial. I will explain my reasons on the record,
7 more specifically, to the reasons as it applies to my
8 new application.

9 What I want to put on the record is the
10 following: Your Honor, is aware of the fact I have,
11 during the trial made a number of motions for a
12 mistrial. I have disputed the Court's rulings. It has
13 become clear on the basis of the rules, in my opinion,
14 the Court has exhibited a bias towards the prosecution
15 and against the defense. Maybe it's because you were a
16 career prosecutor. I don't know. The reasons are
17 unimportant. I looked at the rulings and from my
18 perspective, that's what has become evidence to me
19 here.

20 During my summation I was interrupted many
21 times by the prosecutor. In fact, probably more than I
22 can recall. If you take a look at my summation, you
23 will see that every inference I asked the jury to draw,
24 was based upon actual evidence that was produced here
25 at this trial. For example, I started to say that

1 Dr. Reich was asked by law enforcement to lecture to
2 them about DNA and DNA testing. Mr. Perri objected.
3 You sustained the objection. I'm not quite sure why
4 that was objectionable. It was a fact in evidence.
5 Dr. Reich testified that he was hired by law
6 enforcement, but for whatever reason, Mr. Perri
7 objected and you sustained it. I'm not exactly sure
8 why.

9 And then when Mr. Perri made a big deal about
10 the electropherographs that were mistakenly put into
11 the documentation, given to the defense, and I tried to
12 draw an analogy to why it was unfair and why the
13 prosecution was being hypocritical in examining
14 Dr. Reich, for an error they created, and I tried to
15 draw an analogy, Mr. Perri objected, and you sustained
16 it. You can't -- I mean, defense lawyers have the
17 right to be creative. I wasn't making up facts, I was
18 drawing an analogy which obviously wasn't in evidence,
19 and the fact is, that you simply, in that regard,
20 sustained the objection. Yes, you would tell the jury
21 what the jury remembers is their business, but you
22 sustained it when I objected to Mr. Perri's comments,
23 you overruled them, but told the jury it's their
24 recollection that counts.

25 Mr. Perri, in one of his references to the

1 jury, stated that Boccio's statements, that he says he
2 heard from the defendant about, I licked her once in
3 the bedroom and arrest me. She said, I raped her
4 daughter. That's not in evidence. Mr. Perri made
5 reference to something that wasn't in evidence, because
6 he wanted to show that was in the arrest reports, but
7 it's not in evidence. And yet, not only did you not
8 sustain my objection, you overruled and told the jury
9 they could consider what they have to consider when
10 testimony comes to the evidence in the case.

11 Now, Judge, the specifics about my particular
12 application in this case, and it troubles me because I
13 cannot understand the Court's ruling. The Court would
14 note in exhibit -- Court Exhibit number XII, we, the
15 jury, would like to hear the 911 call from Crystal.

16 I'm going to deal with that part first.
17 That's the first part of the sentence. The only thing
18 that that could mean is they want to hear what Crystal
19 said to the 911 operator. Very simple, or they say, go
20 on, or the transcript, if it was on record.

21 Now, I'm not exactly sure what that means,
22 the transcript. They can't get a transcript, and then
23 they go on, if it's on the record, can we see it or
24 hear it? So, when they're asking for the transcript,
25 they think it's something already been prepared and

1 they want to take it with them into the jury room, the
2 deliberation room, which they can't do. I understand
3 that, or hear it. The phrase here, what they are
4 really saying to the Court in this note is, we want to
5 know what Crystal Ramirez said to the 911 operator.

6 Now, your Honor knows that is in evidence in
7 this case, because after she heard the 911 tape, I then
8 proceeded to ask her questions about what she said and
9 she answered them. So, that is in the record. This is
10 what the jury wants to hear, but you said in your
11 ruling, the jury is smart. I'm not going to give them
12 what they haven't asked for, and my answer to that was,
13 the jury is not so smart. None of them sat in a
14 criminal case before. They're not sophisticated in the
15 ways of the system. It's up to the Court to interpret
16 and see what it is they want. For you to say, I'm not
17 going to give them what -- I don't know what they want,
18 I suggest is not supported by the facts in the case.

19 Now, you did say yesterday that when you were
20 a prosecutor, this is how I did it. When I was a
21 judge, I think for the five cases you have been on
22 trial, this is how you did it. If that means that the
23 prosecutor has urged the Court in the past cases in
24 which you were a trial attorney to say, don't give them
25 what you think they want, make sure they verbalize it

1 exactly, specifically, well, Judge, what would you have
2 wanted this jury to write to you? Would it have been
3 sufficient if they said we want to hear Mr. Berger's
4 questions of Crystal Ramirez on what she said to the
5 911 operator?

6 Now, they think from what you ruled when you
7 said the 911 tape is not in evidence, then it's not in
8 evidence. They shouldn't -- how specific do they have
9 to get? Don't you think that, and your statement
10 yesterday, Judge, I'm not going to consider whether or
11 not it helps one side or the other as to what their
12 questions are. That's irrelevant. The Court shouldn't
13 be thinking in terms of who it is helping and who it is
14 not helping. The only issue the Court should be
15 thinking about is, what do they want. Can I give it to
16 them? Is it in evidence? Period. We know what they
17 want. The Court surely must know. You must know that
18 what they want is what Crystal Ramirez said to the 911
19 operator. There is no other interpretation from the
20 question as set forth in Court Exhibit Number XII,
21 none.

22 Now, do you remember, Judge, when you were
23 part of the voir dire process, you told every single
24 prospective juror how important it was for them to keep
25 an open mind. You used your husband as an example. He

1 was the one who didn't exhibit that quality, that he
2 says, it's my way or the highway, is the way I think
3 you put it, and that we don't need jurors who don't
4 keep an open mind.

5 Judge, we also need judges who do the same,
6 and prosecutors, and defense lawyers who do the same
7 because justice is not defined by whether or not a
8 guilty person is convicted or an innocent person is
9 acquitted. That's not justice.

10 Justice is twelve fair-minded jurors with a
11 fair-minded judge, with an ethical prosecutor, an
12 ethical defense lawyer doing the best they can under
13 the rules of our law and whatever happens, if it comes
14 under that fair process, that's justice. Even if it's
15 factually wrong in the conclusion that they come to,
16 Judge, I'm asking you to exhibit the same quality or
17 the opposite of the quality that you said was not
18 acceptable by your husband and take a look at this and
19 ask yourself, what is it the jury is looking for? We
20 know what they're looking for. We know there can be no
21 other interpretation, and for you to ask it, to
22 verbalize it in some specific way so you clearly know
23 it is not taking a look at this exhibit in an open
24 minded way because we know what the jury was looking
25 for. And I'm asking you to have that part of the

1 transcript read back to them and honor the request that
2 they made, because I saw after you made that ruling,
3 it's not in evidence, some jurors looked at the other
4 jurors to say, you see, whatever it was. I have no
5 idea what they were thinking. It was important to that
6 juror, or those jurors to know what it was. Why would
7 we not give it to them? Is there any other rational
8 explanation for what these jurors wanted? We know it's
9 there. We know it's in evidence. I'm asking you to
10 reconsider your failure, and to reconsider. I'm asking
11 because this is the most sacrosanct part of the trial.
12 We go out of our way to make sure the jurors are not
13 tainted one way or the other, to fail them. Whether
14 you think it's important, or I think it's important, or
15 Mr. Perri thinks it is important, is irrelevant.
16 Failure to give them what they think is important seems
17 to me to be the basis for a mistrial. I'm asking you
18 to reconsider and get the jury -- let the jury get that
19 part of the testimony that we know is in evidence.

20 THE COURT: Thank you.

21 MR. PERRI: Very briefly, with respect to
22 defense counsel's application, the People oppose.
23 There is no basis for a mistrial. Specifically, the
24 request to have the testimony read back to the jury,
25 they have not requested it be read back. The People

1 oppose that as well. There is no ambiguity in the
2 jury's question. We, the jury, would like to hear the
3 911 call. That is not possible. It is not in
4 evidence, from Crystal, or the transcript of it. That
5 is not in evidence and not possible. If it's on the
6 record, can we see it or hear it? They just asked for
7 a transcript or the actual recording. That's,
8 obviously, what the sentence is referring to, the
9 hearing, the recording, or seeing the transcript. They
10 have, in various other requests of this Court,
11 specified that they wanted testimony. They did not do
12 that in this request. There is no ambiguity. There is
13 no need for the Court to make any interpretation if
14 there was ambiguity. If the Court would ask additional
15 questions, but as the question is clear, the jury
16 received answers from the Court. They are free to send
17 follow-up notes, and there are no grounds for a
18 mistrial, your Honor.

19 THE COURT: Thank you. The Court considered
20 the application of the defense and response of the
21 People. The application for the Court to read the
22 testimony related to the 911 call is denied. The
23 request for a mistrial is likewise denied.

24 Are we ready to do the read backs for the
25 jury?

Proceedings

1620

1 MR. PERRI: Yes, your Honor.

2 MR. BERGER: Yes, your Honor.

3 THE COURT: Bring in the jury, please.

4 (Whereupon, the jury entered the courtroom.)

5 THE CLERK: Do both sides stipulate all sworn
6 jurors are present, People?

7 MR. PERRI: Yes, your Honor.

8 MR. BERGER: Yes, your Honor.

9 THE COURT: Good morning, everyone. Welcome
10 back. At the close of business yesterday, you all sent
11 in a note. We marked it as Court Exhibit XIII. I read
12 it into the record yesterday. Let me do it again this
13 morning so you know what you are about to hear from the
14 court reporter.

15 You sent in a note, we, the jury, would like
16 to see the rights card that has already been provided
17 to you. Then you stated Sincere's testimony read back,
18 and at what time did he break down and cry. The court
19 reporter will handle that shortly.

20 Additionally, you asked for Detective
21 Boccio's conversation with Daniel Ramos, referring to,
22 quote, I licked her once in the bedroom. You state, we
23 just want to verify the statement.

24 We'll now handle those two questions.

25 (Whereupon, the record was read back.)

Proceedings

1621

1 THE COURT: That concludes the read back for
2 this note. If there is anything additional you need
3 from us, let us know. Continue your deliberations.

4 (Whereupon, the jury exited the courtroom.)

5 THE CLERK: Case on trial continued,
6 Indictment 742N of 2014, People of the State of New
7 York vs. Daniel Ramos.

8 Let the record reflect all parties are
9 present. The jury is not present at this time.

10 Are the People ready?

11 MR. PERRI: Yes, your Honor.

12 THE CLERK: Defense counsel ready?

13 MR. BERGER: Yes, your Honor.

14 THE COURT: We received a note from the jury.
15 It's been marked Court Exhibit XIV. It reads as
16 follows: We, the jury, one, would like to hear the
17 evidence from Mr. Chillseyzn and Dr. Reich regarding
18 the vulva swab, specifically, related to saliva found.

19 Two, Dr. Reich's comment on wiping after
20 urinating and possibly wiping away DNA.

21 Three, please clarify whether saliva testing
22 identifies DNA.

23 Four, please go over the definition of
24 reasonable doubt.

25 Five, please reread the definition of

1 endangering the welfare of a child.

2 We'll call them in now and send them out to
3 lunch. With regards to the first three requests, we
4 will answer that via read back.

5 With regards to the request for the
6 definition of reasonable doubt and the definition of
7 endangering the welfare of a child, I'll read that from
8 the charge.

9 People, did you see the note?

10 MR. PERRI: Yes, your Honor.

11 MR. BERGER: Yes, I did.

12 THE COURT: All right. Let's bring in the
13 jury.

14 (Whereupon, the jury entered the courtroom.)

15 THE CLERK: Do both sides stipulate all sworn
16 jurors are present, People?

17 MR. PERRI: Yes, your Honor.

18 THE CLERK: Defense counsel?

19 MR. BERGER: Yes, your Honor.

20 THE COURT: Good afternoon, everyone. We
21 received a note from you that we marked as Court
22 Exhibit XIV.

23 It reads as follows: We, the jury, one,
24 would like to hear the evidence from Mr. Chillseyzn and
25 Dr. Reich regarding the vulva swab. Specifically,

1 related to saliva found.

2 Two, Dr. Reich's comment on wiping after
3 urinating and possibly wiping away DNA.

4 Three, please clarify whether saliva testing
5 identifies DNA.

6 Four, please go over the definition of
7 reasonable doubt.

8 Five, please reread the definition of
9 endangering the welfare of a child.

10 It's approximately twenty to one. At this
11 time, I'm going to send you all for your lunch break.
12 When you come back from lunch, we will have read backs
13 for you on each question that you have put forth to the
14 Court.

15 Between now and then, let me give you those
16 admonitions I know you all know so well. Please
17 remember to keep an open mind. Do not discuss the case
18 amongst yourselves, or with anyone else during this
19 break. Do not permit anyone to discuss the case in
20 your presence. Do not talk to the lawyers, witnesses,
21 or the defendant about anything during this break.

22 Do not visit or view the place where the
23 charged crime was allegedly committed, or any other
24 place involved in the case. If there is any news
25 coverage of the case, ignore it and don't get on your

1 phones and attempt to research the case. Have a great
2 lunch. I'm ordering you at this time to stop
3 deliberating. Do not discuss this case any further
4 until my twelve jurors are back in the jury room after
5 lunch with the door closed. Please try to get back
6 around 2:00. If you can continue your deliberations
7 without the information in the note, please do so.
8 Otherwise, wait for us to call you into the room here
9 and we will start the read backs.

10 To my alternate, you are allowed, of course,
11 to be with your fellow jurors with lunch, but no
12 discussion of the case and you will be back around
13 2:00.

14 (Whereupon, the jury exited the courtroom.)

15 THE COURT: The attorneys should go through
16 together with the reporter at whatever is a convenient
17 time for all of you so you can see what you believe
18 should be read back. Any disagreement with regards to
19 that, it will be brought to my attention, and we will
20 make a decision after it's brought to my attention.

21 See you all around 2:00 or soon thereafter,
22 as you are both ready.

23 (Whereupon, a luncheon recess was taken.)

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Proceedings

1625

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THE CLERK: Case on trial continued,
Indictment Number 742N of 2014, People of the State of
New York vs. Daniel Ramos.

All parties are present. The jury is not
present at this time.

Are the People ready?

MR. PERRI: Yes, your Honor.

THE CLERK: Defense counsel ready?

MR. BERGER: Yes.

THE COURT: With regards to Court Exhibit
XIV, which is the note we received right before lunch,
have both parties reached an agreement on the read
backs related to the first three questions?

MR. PERRI: No, your Honor.

THE COURT: What is your opinion?

MR. PERRI: The section in connection with
defense counsel requesting the -- related to the touch
DNA be included in relation to whether or not the third
question be whether or not there was saliva testing.

THE COURT: It says clarify whether saliva
testing identifies DNA.

MR. PERRI: The People oppose that. There's

1 not an explanation of touch DNA, which is a separate
2 concept. Defense counsel discussed and differentiated
3 that. The People would oppose that being read back,
4 your Honor.

5 MR. BERGER: I'm asking for ten lines to be
6 included after the last portion that we agreed upon
7 everything, except the ten lines.

8 THE COURT: The Court --

9 MR. BERGER: See if you take a look at the
10 first two questions, it's clear and Mr. Perri and I
11 read the transcript with respect to Mr. Chillseyzn and
12 Dr. Reich. It is clear from their testimony that you
13 could get DNA from saliva. What I am reading into this
14 question, and I think it has to be taken broadly since
15 they have gotten the answer to the question, the answer
16 to the first two requests is that all I wanted them --
17 because the saliva deals with stains 1-A1 and 1-A2. In
18 that our position is that the defendant's DNA is there
19 from the touch DNA. That's all I'm asking that to be
20 read, so they just don't -- because a literal reading
21 of the third question is not asking for anything they
22 don't -- wouldn't already get from the first two. All
23 I'm saying, I don't think it is contested factually.
24 Read it, the touch DNA can be transferred to the stains
25 1-A1 and 1-A2 simply having touched an item, or in this

1 case, the underwear. I don't think it means -- if
2 anything, it clarifies things. They understand the
3 stains are not just saliva, but that the stains contain
4 DNA, and since we already know there is no tests to
5 separate the source of DNA on the station, that
6 Mr. Chillseyzn and Dr. Reich have conceded, all I'm
7 saying is this is a complete picture to point out the
8 touch DNA can be in the saliva taken, and that's what I
9 think they're asking for when asked for the third
10 question.

11 The question is: It reads on this note,
12 please clarify whether the saliva testing identifies
13 DNA has nothing to do with touch DNA. That section
14 will not be read.

15 THE COURT: We have since received a second
16 note while everyone was working on the last note. This
17 is Court Exhibit XV. It states: We, the jury, would
18 like to hear from Daniel, when Daniel walked into the
19 house and went to the bathroom.

20 Have you both agreed on the read back for
21 that?

22 MR. PERRI: Yes, your Honor.

23 MR. BERGER: Yes.

24 THE COURT: The second part of that, can we
25 see the nurse's report. I believe, we have medical

1 reports.

2 MR. PERRI: Nurse, the SANE nurse examination
3 report from Nurse McAllister are the medical records in
4 evidence. That was today.

5 THE COURT: It would be my intention to send
6 back that item which is medical records. I'm not sure
7 what the exhibit number is. I'll tell you in one
8 minute.

9 It would be Court Exhibit -- People's Exhibit
10 3. It will be sent back after read backs.
11 Additionally, after the court reporter finishes her
12 complete read back, I'll then read to the jury
13 reasonable doubt, and I'll read endangering the welfare
14 of a child.

15 MR. PERRI: Yes.

16 MR. BERGER: Yes.

17 (Whereupon, the jury entered the courtroom.)

18 THE CLERK: Do both sides stipulate all sworn
19 jurors are present, People?

20 MR. PERRI: Yes.

21 THE CLERK: Defense.

22 MR. BERGER: Yes.

23 THE COURT: I hope you enjoyed your lunch.

24 While we were working on answering your note that we
25 received before lunch, we did receive another note from

1 you that has been marked Court Exhibit XV. It reads as
2 follows: We, the jury, would like to hear from Daniel
3 when Daniel walked into the house and went to the
4 bathroom. It then says, can we see the nurse's report?
5 At the end of all of the read backs in court, we'll
6 send that report back to you into the jury room.

7 At this time we're going to handle both
8 notes, Court Exhibit XIV and Court Exhibit XV. Court
9 Exhibit XIV, we will give you that. You requested
10 Mr. Chillseyzn and Dr. Reich. I will also then give
11 you the definition of reasonable doubt and will reread
12 endangering the welfare of a child.

13 (Whereupon, the record was read back.)

14 THE COURT: What does it mean when the law
15 requires proof of guilt beyond a reasonable doubt. The
16 law uses the term proof beyond a reasonable doubt to
17 tell you how convincing the evidence of guilt must be
18 to permit a verdict of guilty. The law recognizes in
19 dealing with human affairs there are very few things in
20 this world that we know with absolute certainty.

21 Therefore, the law does not require the
22 People to prove the defendant guilty beyond all
23 possible doubt. On the other hand, it is not
24 sufficient to prove that the defendant is probably
25 guilty.

1 In a criminal case, the proof of guilt must
2 be stronger than that. It must be beyond a reasonable
3 doubt. A reasonable doubt is an honest doubt of the
4 defendant's guilt for which a reason exists based upon
5 the nature and quality of the evidence. It is an
6 actual doubt, not an imaginary doubt. It is a doubt
7 that a reasonable person, acting in a matter of this
8 importance, would be likely to entertain because of the
9 evidence that was presented or because of the lack of
10 convincing evidence.

11 Proof of guilt beyond a reasonable doubt is
12 proof that leaves you so firmly convinced of the
13 defendant's guilt that you have no reasonable doubt of
14 the existence of any element of the crime or of the
15 defendant's identity as the person who committed the
16 crime.

17 In determining whether or not the People have
18 proven the defendant's guilt beyond a reasonable doubt,
19 you should be guided solely by a full and fair
20 evaluation of the evidence. After carefully evaluating
21 the evidence, each of you must decide whether or not
22 that evidence convinces you beyond a reasonable doubt
23 of the defendant's guilt. Whatever your verdict may
24 be, it must not rest upon baseless speculations, nor
25 may it be influenced in any way by bias, prejudice,

1 sympathy, or by a desire to bring an end to your
2 deliberations or to avoid an unpleasant duty.

3 If you are not convinced beyond a reasonable
4 doubt that the defendant is guilty of a charged crime,
5 you must find the defendant not guilty of that crime.

6 If you are convinced beyond a reasonable
7 doubt that the defendant is guilty of a charged crime,
8 you must find the defendant guilty of that crime.

9 The second count in this case is endangering
10 the welfare of a child.

11 Under our law, a person is guilty of
12 endangering the welfare of a child when that person
13 knowingly acts in a manner likely to be injurious to
14 the physical, mental, or moral welfare of a child less
15 than 17 years old.

16 The term knowingly has its own special
17 meaning in our law. I'll now give you the meaning of
18 that term.

19 A person knowingly acts in a manner likely to
20 be injurious to the physical, mental, moral welfare of
21 a child when that person is aware that he is acting in
22 such a manner. Actual harm to the child need not
23 result. The defendant must act in a manner which is
24 likely to be injurious to the physical, mental, or
25 moral welfare of a child knowing the likelihood of such

1 injury. Knowing of the age of the child is not an
2 element of this crime, and it is not a defense to this
3 charge that the defendant did not know the age of the
4 child or believed the age of the child to be 17 years
5 or more.

6 In order for you to find the defendant guilty
7 of this crime, the People are required to prove from
8 all of the evidence in this case, beyond a reasonable
9 doubt, each of the following three elements:

10 One, that on or about October 16, 2013, in
11 the County of Nassau, the defendant, Daniel Ramos,
12 acted in a manner likely to be injurious to the
13 physical, mental, or moral welfare of Mya Feliciano
14 Ramirez.

15 Two, that the defendant did so knowingly.

16 And three, that Mya Feliciano Ramirez was
17 less than 17 years old.

18 Therefore, if you find that the People have
19 proven beyond a reasonable doubt each of those
20 elements, you must find the defendant guilty of the
21 crime of endangering the welfare of a child as charged
22 in the second count.

23 On other hand, if you find the People have
24 not proven beyond a reasonable doubt any one or more of
25 those elements, you must find the defendant not guilty

Proceedings

1633

1 of the crime of endangering the welfare of a child as
2 charged in the second count.

3 You may resume your deliberations. Thank you
4 very much.

5 (Whereupon, the jury exited the courtroom and
6 deliberations resumed.)

7 THE CLERK: Case on trial continued,
8 Indictment 742N of 2014, People of the State of New
9 York vs. Daniel Ramos.

10 Let the record reflect all parties are
11 present. The jury is not present at this time.

12 People ready?

13 MR. PERRI: Yes, your Honor.

14 THE CLERK: Defense counsel ready?

15 MR. BERGER: Yes, your Honor.

16 THE COURT: It's about 4:35. I'm going to
17 call the jury in and send them home for the night.
18 I'll ask them to gather at 9:30 tomorrow morning to
19 continue with their deliberations.

20 (Whereupon, the jury entered the courtroom.)

21 THE CLERK: Do both sides stipulate all sworn
22 jurors are present, People?

23 MR. PERRI: Yes, your Honor.

24 MR. BERGER: Yes, your Honor.

25 THE COURT: Given the hour of the day and I

Proceedings

1634

1 apologize I kept you a little longer than I intended,
2 but we're going to let you go for the night. You are
3 now to stop all deliberations through the overnight.
4 You must keep an open mind throughout this timeframe.
5 Do not discuss the case amongst yourselves or with
6 anyone else during this break. Do not permit anyone to
7 discuss the case in your presence. Do not talk to the
8 lawyers, witnesses, or the defendant about anything
9 during this break, and do not visit or view the place
10 where the charged crime was allegedly committed, or any
11 other place involved in the case.

12 And if in the overnight there is any news
13 coverage of the case, do not read, view or listen to
14 any accounts or discussions of the case reported by the
15 news media.

16 And do not attempt to research any fact,
17 issue, or law related to this case, whether by
18 discussion with others, by research in the library, or
19 on the Internet, or by any other means or source.

20 I'm going to ask you to please be here
21 tomorrow morning at 9:30 to start your deliberations at
22 9:30 tomorrow morning. Once you are all gathered in
23 the room at 9:30, please start your deliberations. We
24 will be here for you if there is anything you need from
25 the Court.

Proceedings

1635

1 Madam alternate, you are not to discuss this
2 case, obviously, either through the overnight. These
3 admonitions apply to you also. Be back at 9:30
4 tomorrow morning in a separate room where you are being
5 kept.

6 Thank you, all. Have a great evening.

7 (Whereupon, the jury exited the courtroom.)

8 (Whereupon, the trial was adjourned to May
9 29, 2015.)

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1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 43

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 742N/14

5 -against- :
:

6 DANIEL RAMOS, :
:

7 Defendant. : Jury Trial

8 -----X

9 May 29, 2015
262 Old Country Road
Mineola, New York

10

B E F O R E:

11

12 HONORABLE TERESA K. CORRIGAN,
Acting Supreme Court Justice

13

A P P E A R A N C E S:

14

(As Previously Noted)

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16 * * * * *

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18 THE CLERK: Remain seated, come to order.

19

Case on trial continued, Indictment Number 742N of

20

2014, People of the State of New York vs. Daniel Ramos.

21

Let the record reflect all parties are

22

present. The jury is not present at this time.

23

Carmen Knight is the Spanish interpreter

24

today.

25

Are the People ready?

Proceedings

1637

1 MR. PERRI: Yes, your Honor.

2 THE CLERK: Defense counsel ready?

3 MR. BERGER: Yes, your Honor.

4 THE COURT: We received a note from the jury.
5 It's now been marked Court Exhibit XVI. It reads the
6 following: We, the jury, have a verdict.

7 Are we ready for the jury, People?

8 MR. PERRI: Yes.

9 MR. BERGER: Yes.

10 THE COURT: Bring in the jury.

11 (Whereupon, the jury entered the courtroom.)

12 THE CLERK: Do both sides stipulate all sworn
13 jurors are present and seated properly?

14 MR. PERRI: Yes, your Honor.

15 MR. BERGER: Yes, your Honor.

16 THE COURT: Good morning, everyone. We have
17 received your note, and it has been marked Court
18 Exhibit XVI. It reads: We, the jury, have a verdict.
19 Please turn your attention to the clerk of the court.

20 THE CLERK: Under indictment number 742N of
21 2014, People of the State of New York vs. Daniel Ramos.

22 Mr. Foreman, has the jury agreed upon a
23 unanimous verdict?

24 THE FOREPERSON: Yes.

25 THE CLERK: Will you please rise and you may

1 take the verdict sheet out.

2 As to count one, criminal sexual act in the
3 first degree, what is your verdict, guilty or not
4 guilty?

5 THE FOREPERSON: Guilty.

6 THE CLERK: As to count two, endangering the
7 welfare of a child, what is your verdict, guilty or not
8 guilty?

9 THE FOREPERSON: Guilty.

10 THE CLERK: You may be seated.

11 Members of the jury, listen to your verdict
12 as it stands recorded. You say, through your
13 foreperson, that each of you find the defendant guilty
14 of count one, criminal sexual act in the first degree,
15 and guilty of count two, endangering the welfare of a
16 child, and so say you all?

17 (Whereupon, the jury collectively responded
18 yes.)

19 THE COURT: Would you like the jury polled?

20 MR. BERGER: Yes, your Honor.

21 THE CLERK: Jurors, at this time, I will
22 reread your verdict and then ask you each individually
23 if that was your verdict.

24 Members of the jury, you say that you find
25 the defendant guilty as to count one, criminal sexual

Proceedings

1639

1 act in the first degree, and guilty of count two of
2 endangering the welfare of a child.

3 Juror number one, is that your verdict?

4 JUROR NUMBER ONE: Yes.

5 THE CLERK: Juror number two, is that your
6 verdict?

7 JUROR NUMBER TWO: Yes.

8 THE CLERK: Juror number three, is that your
9 verdict?

10 JUROR NUMBER THREE: Yes.

11 THE CLERK: Juror number four, is that your
12 verdict?

13 JUROR NUMBER FOUR: Yes.

14 THE CLERK: Juror number five, is that your
15 verdict?

16 JUROR NUMBER FIVE: Yes.

17 THE CLERK: Juror number six, is that your
18 verdict?

19 JUROR NUMBER SIX: Yes.

20 THE CLERK: Juror number seven, is that your
21 verdict?

22 JUROR NUMBER SEVEN: Yes.

23 THE CLERK: Juror number eight, is that your
24 verdict?

25 JUROR NUMBER EIGHT: Yes.

Proceedings

1640

1 THE CLERK: Juror number nine, is that your
2 verdict?

3 JUROR NUMBER NINE: Yes.

4 THE CLERK: Juror number ten, is that your
5 verdict?

6 JUROR NUMBER TEN: Yes.

7 THE CLERK: Juror number eleven, is that your
8 verdict?

9 JUROR NUMBER ELEVEN: Yes.

10 THE CLERK: Juror number twelve, is that your
11 verdict?

12 JUROR NUMBER TWELVE: Yes.

13 THE COURT: Members of the jury, in a few
14 moments you will be released from jury duty. Before
15 you go, I would like to thank you for the service you
16 have given. You have taken on the very difficult task
17 of judging a fellow human being and done so admirably.
18 You have carried on traditions in the very heart of our
19 constitution, and, once again, proved why a trial by a
20 jury is best and the finest way to resolve a
21 controversy in a civilized manner. You have shown
22 you're proud in becoming part of this tradition. The
23 simple truth is, without persons like yourselves who
24 are ready, willing and able to serve on a jury, the
25 tradition could not continue. Because of you that

1 tradition shall pass on to those who come after us.
2 You have done your part in keeping the right of trial
3 by jury alive.

4 I hope you have found this experience
5 rewarding, and I hope you look forward to serving on
6 another jury at some point in the future, not the near
7 future. You have a few years before you need to worry
8 about that. We, the Court and the lawyers are
9 extremely grateful for your service. I thank you on
10 their behalf and myself. You are formally discharged
11 from further jury service at this time. That means the
12 admonitions I've been giving you, that they no longer
13 apply, and you may talk to anyone you wish to about the
14 case and go anywhere you want to go. When you leave,
15 the lawyers may wish to talk to you. The choice is
16 yours. If you want to talk to them, please feel free
17 to do so. If you do not want to talk to them, let an
18 officer know and no one will approach you. Again,
19 thank you. I wish each of you the very best. Have a
20 wonderful summer.

21 (Whereupon, the jury exited the courtroom.)

22 THE COURT: At this time, date for
23 sentencing, please.

24 MR. PERRI: The People do have an application
25 for the defendant's custody to be changed to remand,

Proceedings

1642

1 your Honor.

2 THE COURT: Do you want to be heard on that
3 Mr. Berger?

4 MR. BERGER: No, your Honor.

5 THE COURT: The defendant will be remanded,
6 and I think we need to go four to six weeks, whatever
7 works for both sides. Let's say the week of July 13th.
8 What works for both of you?

9 MR. BERGER: At this point, whatever you
10 pick.

11 THE COURT: Why don't we say Monday, July
12 13th.

13 MR. PERRI: Yes, your Honor.

14 THE COURT: Very good.

15

16 * * *

17

18 The foregoing is hereby certified to be a true and
19 accurate transcript of the proceedings as transcribed
20 from the stenographic notes.

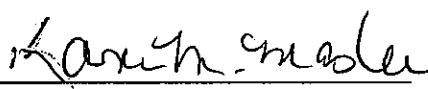
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KAREN M. MASLER
Senior Court Reporter

1643

I N D E X

	<u>WITNESS FOR THE PEOPLE</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
1					
2					
3					
4	C. Ramirez	610	629		
5	S. Ramirez	670	679		
6	P.O. Boccio	693	702	720/722	721/722
7	Mya Ramirez	764	770	807	809
8	K. McAllister	821	836	844	845
9	C. Chillseyzn	846	879	883	
10	Det. Baran	935	971	1036/1071	1045/1072
11	Det. Pacheco	1105	1118		
12	J. Hanson	1376	1384	1385	1386
13					
14					
15					
16	<u>FOR THE DEFENDANT</u>				
17	David Ramos	1160	1163		
18	Stephany Ramos	1164	1171	1175	
19	Christy Hernandez	1176	1180		
20	Dr. Reich	1189	1231	1257	1265
21	Daniel Ramos	1273	1326	1363	

E X H I B I T S

	<u>PEOPLE'S</u>	<u>Description</u>	<u>For Id.</u>	<u>In Ev.</u>
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1644

1 INDEX CONTINUED:

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3	<u>DEFENDANT'S</u>	<u>Description</u>	<u>For Id.</u>	<u>In Ev.</u>
4	A	photo	744	
	B	trace doc.	1205	
5	C	YSTR doc.		1223
	D	YSTR doc.		1223

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kmm